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*Panama (Republic)*  
*Laws, statutes, etc,*  
**THE LAW OF CIVIL PROCEDURE**

IN FORCE IN

**PANAMA AND THE CANAL ZONE**

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TRANSLATED BY

**FRANK L. JOANNINI**

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ISTHMIAN CANAL COMMISSION

WASHINGTON, D. C.

JULY, 1905

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## BOOK SECOND.

### CIVIL PROCEDURE.\*

(The figures following articles refer to the respective ordinal numbers.)

#### TITLE I.

#### Civil Proceedings in General.

##### CHAPTER I.

##### *Definitions and Preliminary Provisions.*

1). ART. 254. The object of a civil action (*juicio civil*) is to decide the controversies arising on rights conferred by the substantive law.

2). ART. 255. The words cause (*causa*), suit (*pleito*) and action (*juicio*) have the same signification.

3). ART. 256. Civil actions are divided into ordinary and special. Ordinary are those in which the general rules of procedure are followed; and special, those conducted in a special manner.

839 *et seq.*, 957 *et seq.*

4). ART. 257. The process is the written history of a judicial controversy, from the petition or complaint (*demanda*) to the judgment, inclusive.

362.

5). ART. 258. Instance is called the exercise of the action in each of the degrees of the proceedings. There are but two instances: the first, is the proceeding before the inferior judge; and the second, that before the superior Judge or Tribunal, by appeal or for consultation.

Supplemented by the following article:

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\* Article 1 of Law 57 of 1887, adopted for the unitarian Republic of Colombia, the Judicial Code which had been in force for the said nation under the federal form. This Code consisted of three books, of which the first was subsequently repealed by article 230 of the Code of Organization. The latter subrogated the First Book referred to. The Second and Third Books, now published, are those of the Judicial Code adopted. As in the first edition of this Code, made under the new régime, the order of the articles was changed, by reason of the incorporation in Book I of the articles of Law 61 of 1886, which subrogate those of said Book which were repealed, and the incorporation also in the other Books of the amendatory provisions contained in Laws 46 of 1876 and 53 of 1881, the first article of this second Book bore No. 254 in said first edition, which number is retained. The number of this article in the Code adopted was 189.

6). ART. 333 of Law 105 of 1890. An action is exercised in first instance from the moment the complaint is filed or a declaration is made that criminal proceedings lie according as to whether the matter is a civil or a criminal one, until the definitive decision of the Judge or Magistrate before whom the complaint is made or the criminal trial held, becomes absolute, or until the beginning of the exercise of the second instance, when the latter is exercised. The same action is exercised at second instance, from the time the decision granting an appeal from said definitive judgment becomes absolute, or from the time an order is made that the matter be submitted for consultation to the respective superior, until the latter having pronounced definitive judgment, the jurisdiction in the superior court terminates.

7). ART. 259. A reference (*traslado*) is the information given one of the parties of the petitions, evidence or claims of the other, in order that said party may make answer or propose what may be proper with regard to either.

The reference is effected by notifying the respective party of the decree ordering it made, and placing at his disposal, for the term which the law or the Judge may designate for answer thereto, the record or that part thereof affected by the reference. The term of such reference cannot exceed six days in any case.

Expressly derogated by article 338 of Law 105 of 1890, and subrogated by the following:

8). ART. 1 of Law 105 of 1890. A reference (*traslado*) is the information given to one of the parties of the petitions, evidence or claims of the other, in order that said party may make answer or propose what may be proper with regard to either.

The reference is effected by notifying the respective party of the decree ordering it made, and placing at his disposal, for the term which the law, or the Judge in its absence, may fix within which to make answer thereto, the record or the part thereof affected by the reference.

This circumstance shall be clearly stated in the notice. The term of the reference cannot exceed six days in any case.\*

195, 197, 201, 844, 845, 854 to 857.

9). ART. 260. The litigant or group of litigants adducing the same claims in an action, is called a party.

52, 53, 217, 218, 729.

10). ART. 261. In the absence of any other general or special rule, any deficiency in the procedure shall be supplied according to the provisions of this Code for similar cases.

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\* The representative of the "Montepio" is entitled to double the terms prescribed for references. See Article 45, subdivision 4, of Law 153 of 1896.

11). ART. 262. The provisions of this title shall be applicable to all civil actions, in so far as their nature permits, reserving always any special provision which modifies or repeals that of a general character

### CHAPTER 3.

#### *Complaint in General.*

12). ART. 263. A complaint (*demanda*) is the petition addressed to a Judge requesting that he order an obligation enforced.

13). ART. 264. There is no difference between complaints by reason of the amount involved, when affairs in which the Nation has an interest are in question.

The three following articles are additional:

14). ART. 2 of Law 105 of 1890. In suits between private individuals, the complaints are of greater or lesser import. The former are those in which the interest involved is of three hundred pesos or more. The latter, those in which the interest involved is under three hundred pesos.

This is without prejudice to the provisions of the laws relating to the Code of Judicial Organization.\*

15). ART. 3 of Law 105 of 1890. The interest is considered the total liquidated amount sued for, expressed by a determinate figure.

If with the liquidated sum, one that shall not have been liquidated is sought to be recovered, and if together, it shall be clearly evident that they form an interest of three hundred pesos or more, the complaint shall be of greater import.

963, 968.

16). ART. 4 of Law 105 of 1890. In order to determine the amount, in suits which do not involve a known amount, the plaintiff shall fix it in the complaint; but the defendant may, before making any answer, object to the amount fixed by the defendant, and in such case the amount shall be determined by experts, to be appointed by the Judge.

17). ART. 265. The writ of complaint or petition must contain the designation of the Judge to whom it is addressed, the name of the plaintiff, stating whether he sues in his own name or on behalf of another, and his nationality or residence; the defendant and his nationality and residence, if known; the thing, amount or act, the subject of the action

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\* In the Code of Organization, Book I of this Code, article of order 167 establishes an exception to this rule; in that it provides that the Municipal Judges of the seats of Judicial Districts take cognizance of certain actions, when the amount involved does not exceed five hundred pesos.

clearly expressed in accordance with the provisions of this Code, and the right, cause or reason the basis of the suit.

36 to 41, 842.

18). ART. 266. If the complaint should not be in legal form, the Judge shall return it to the plaintiff the same day of its presentation, in order that he may cure the defects, which shall be indicated as clearly as possible by the Judge. This is understood to be without prejudice to the right of the defendant to demur in the said case (*sin perjuicio de la excepción de inepta demanda*).

843.

19). ART. 267. The plaintiff shall present, with the complaint, the instruments or documents cited therein as a basis for his intention, if they be in his possession.

840, 841, 859, 860, 1373.

20). ART. 268. The complaint may be explained, corrected and amended by the plaintiff, any time before notice of the order directing the taking of evidence; and in such case the Judge shall again refer, for the ordinary term, the explained, corrected or amended complaint. If no evidence is to be taken in the cause, the right to change the complaint shall last until service is made upon the defendant of the citation for judgment.

375, 856, 408, 858, 882.

21). ART. 269. Various rights of action may be exercised by the same party in the same complaint, against the defendant, provided the Judge be of competent jurisdiction for all, and that the rights of action are not contrary to each other; as in such case the plaintiff must select one of them, and after selection, he cannot substitute it by another.

22). ART. 270. Two contrary remedies may also be proposed subsidiarily and conditionally in the same complaint, when the rights are such that they are not destroyed by the selection, or that for any other reason they are not considered incompatible.

23). ART. 271. He who shall sue for a thing under one title and not prove it, may later bring a suit under another title.

24, 26, 35, 697, 1055.

24). ART. 272. An action of ownership to a thing having been instituted, the plaintiff cannot institute an action of servitude in favor of the same thing, until the action of ownership is decided.

25). ART. 273. If the plaintiff should demand more than is due him, the Judge shall declare his right only to what he may prove is due him; and shall adjudge him to pay the defendant the costs which the latter may have incurred by reason of the excess of the suit, unless the plaintiff should prove a just cause of error.

26). ART. 274. If he who sues for the possession of real property cannot establish his right, he is not thereby prevented from instituting an action of ownership as to the same realty.

23, 697.

27). ART. 275. No one can be forced to file a complaint, excepting in the following cases:

1. When a person fears that another will bring a suit against him after the death of some old or sick persons, with whose testimony the former could prove his rights, in which case he who so believes or presumes may force his adversary to bring his action at once, or admit the proof (*le abone la prueba*) for such time as he should do so. In the latter case, that is to say, the admission of the proof having been agreed to, it shall be taken as follows: the person interested shall request the Judge to take the depositions of the witnesses, after citation of the adversary, in order to make use thereof at the proper time; and this testimony shall be kept in the archives of the Court, under closed and sealed cover, the copies requested by the parties being first issued; and

2. If a person should have a right of exception which might lapse if another does not bring his action within a certain time, in which case the former may request the Judge to force the other to bring his action, or to admit the exception for the time he may plead it in court.

(28.) ART. 276. A suit on a determinate thing must be brought against the person considered the possessor thereof, who shall be obliged to make answer thereto, unless he shall state that he holds the thing, not as his own but in the name of another, in which case the latter shall be informed of the reference of the complaint; but if neither the latter should enter a defense in the suit, the plaintiff shall be placed in possession of the thing, without giving rise to further complaints, without prejudice to the true owner demanding and proving his ownership in a suit and the first plaintiff bringing his suit against another person, retaining in the meantime the possession given him.

946, 952, 955, 956, 957, 960 of the Civil Code.

29). ART. 277. The person from whom a thing may have been stolen, swindled, or robbed, may sue therefor the person holding it, or the person who may have judicially been declared the author of the robbery, theft or fraud.

953, 957 of the Civil Code.

30). ART. 278. If a person, fearing that he will be sued for something in his possession, should alienate it to another, against whom it would be more difficult to proceed, he shall be liable for the damage which such alienation may cause the plaintiff; but if the latter should not wish to bring his action against the person having the thing, he may sue the person who fraudulently alienated it, for the price thereof; but after having obtained the price, he cannot sue for the thing.

955 of the Civil Code.

31). ART. 279. If a person should be sued on the ground of the thing sued for being in his possession, if this should not be so, he must state it in his answer; as otherwise, if the plaintiff should prove his ownership, the defendant becomes liable for the thing or for its price, unless the plaintiff should be acting in proved bad faith, knowing that the defendant was not the possessor of the thing.

953, 954 of the Civil Code.

32). ART. 280. If a person sued for a thing not in his possession should so state to the Judge, this dilatory exception shall be heard, comprised in the demurrer (*inepta demanda*); and if the decision should be in favor of the defendant, the complaint against the latter shall be dismissed, unless he should have acquired the thing sued for by theft or fraud, or should have alienated it fraudulently in order to make the action of the plaintiff more difficult.

271.—952, 953, 955 of the Civil Code.

33). ART. 281. The thing sued for shall remain in the power of the person possessing it until the plaintiff shall prove, by legal proceedings, that he has a better right to its possession, excepting a case of deposit or sequestration, and the other cases expressly excepted in this Code.

34, 143 *et seq.*, 171 *et seq.*, 981 subdivision 5, 987, 993, 1093, 1153, subdivision 1, 1305.—959 of the Civil Code.

34). ART. 282. If the defendant should deny having the thing sued for, and the plaintiff should prove that he did have the thing in his possession, the former loses the possession of the thing, and it is acquired by the plaintiff, the defendant, nevertheless, retaining the right to bring an ordinary action of ownership, should he desire to prove that the thing belonged to him.

33.

35). ART. 283. If a person should sue another for a movable thing, and the complaint should be dismissed on proof on the part of the de-



fendant of the loss of the thing without his fault, the plaintiff may bring another action if the thing should return into the possession of the person who had previously been sued therefor.

23.

36). ART. 284. The plaintiff must clearly specify the movable sued for, in order that it may not be confounded with another, and that there may be no doubt as to its quality and amount.

17, 842.

37). ART. 285. If the thing sued for should be a trunk, bale or any other closed movable which was left in deposit, or which disappeared from the possession of its owner in such condition, it is not necessary to state the contents thereof in the complaint.

17, 842.

38). ART. 286. On suits on inheritances, it shall be sufficient that the property of the deceased, or the part or quota corresponding to the plaintiff be demanded in general.

17, 842.

39). ART. 287. Nor is a statement of any amount necessary in proceedings for the rendition of accounts or other similar acts.

17, 842.

40). ART. 288. When the thing sued for consists of weight, tale or measure, and the plaintiff should not remember how much it is exactly he shall so state in his petition, offering to prove the exact amount in the respective term of the action; and the Judge, after exacting a promise of the plaintiff not to act maliciously, shall admit the complaint.

17, 842.

41). ART. 289. If the thing sued for is realty, the boundaries thereof and other circumstances shall be stated in order to permit its identification and distinction from other realty with which it might be confounded.

17, 842.

42). ART. 290. In cases in which the laws require that the debtor be judicially reconvened by the creditor in order that he may be considered delinquent, the reconvention shall be understood as having been made when, by order of the Judge, personal notice shall be served on him of the petition of the creditor suing for the debt, with the presentation of the authentic document vouching therefor.

1608 and Arts. 1 and 3 of Civil Code.

43). ART. 291. If the creditor to whom may have been referred the petition on the payment by consignment, presented by the debtor, in accordance with the substantive civil laws, should not be answered within six days, the consignment shall be considered as accepted and shall have its effects.

If in making reply to the reference the creditor should oppose the payment, pleading that it is not made in accordance with the obligation of the debtor, he must prove it in an ordinary action.

1658, subdivisions 5 and 6 of the Civil Code.

The eight following articles are additional:

44). ART. 5 of Law 105 of 1890. Every Judge taking cognizance of civil matters, for private interests and in an ordinary action of greater import, shall exercise the functions of a Justice of the Peace. For the exercise thereof, in the same order directing the reference of the complaint, he shall fix a day for an amicable conference, a day which shall not be before the third nor after the sixth from the date of the service of the order granting the reference. The conference shall be held before the same judge and a resident of well known probity and influence.

45). ART. 6 of Law 105 of 1890. The Judges shall use, with regard to the plaintiff as well as the defendant, the compulsory process established by Article 334 of this law, in order that the amicable conference may be held, in the cases in which it is necessary. With regard to the persons who are exempted from compulsory process by the law, the conference shall be waived if they should not appear in due time.

46). ART. 7 of Law 105 of 1890. When for any reason, other than interruption of the proceedings or the non-attendance of the plaintiff, the conference should not be held on the date fixed, the period for answering the complaint shall run from the working day next after that on which the conference was to have been held, without prejudice to the latter taking place as soon as possible and the employment of the compulsory process established in Article 334,\* *aforecited*.

47). ART. 8 of Law 105 of 1890. At the act of the conference, the Judge and the resident shall propose means of arrangement to the parties, the former being prohibited from expressing, and it being optional with the latter, to express the private opinion which they may have formed upon the matter.

48). ART. 9 of Law 105 of 1890. The act of the amicable conference shall be held at two sessions, upon two consecutive working days, at such hour and for such time as the Judge may determine. If on account of urgent business on the part of the Judge or any of the parties, or of the resident, the conferences should be interrupted, the Judge shall fix a new day, which shall be one of the three days following.

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\* This is ordinal No. 1604.

If any of the parties should not appear in due time to continue the conference, the latter shall not be held, and in such case, or when no agreement between the parties can be reached, the term to make answer to the complaint shall run from the next working day, it not being necessary for the Judge to so declare.

49). ART. 10 of Law 105 of 1890. If an agreement be reached, an entry shall be made in a book, which shall be kept in every court for this exclusive purpose, stating clearly and precisely the obligations and rights resulting from the agreement, stating the net amounts to be paid the parties, and the date when payments are to be made. Each entry must be preceded by an ordinal number.

50). ART. 11 of Law 105 of 1890. At the foot of the complaint a memorandum shall be made stating whether an agreement was or was not reached, and in the event of an agreement having been reached, the entry shall be cited by the respective ordinal number.

The copy of the entry referred to, authorized by the Judge and the Secretary, partakes of an executory character and serves as a basis for the exception of *res judicata*.

51). ART. 12 of Law 105 of 1890. The functions of a Justice of the Peace shall not be exercised in the following cases:

1. When by reason of the persons or the nature of the matter in question, and by virtue of the provisions of the Civil Code, a compromise between the parties is not possible.

2469 to 2487 of the Civil Code.

2. When by reason of the suit being brought against uncertain or unknown persons, the latter are represented by the Judge taking cognizance of the matter; but if any of said persons should appear in due time, the amicable conference shall be held with such person, without prejudice to continuing the action with regard to those who have not entered an appearance; and

1572, 1573, 1575, 1576, 1580, 1583, 1584, 1585, 1588; 1589, 1590 of the Civil Code.

3. When the plaintiff or the defendant do not reside in the same Municipal District in which is the court before which the suit may have been brought, and the respective attorneys in fact do not have the power to compromise. If a number of persons constitute the suing or sued entity, and any of them should be present in the said District, the conference shall be held with such person, but the effects of the latter shall in no manner prejudice the others.

2471 of the Civil Code.

## CHAPTER III.

*Complainant and Defendant in General.*

52). ART. 292. The complainant is the person who appears before the Judicial Power claiming the efficiency of a right, thus initiating the suit; and the defendant, he of whom the performance of the obligation correlative to the right of the complainant is demanded.

9.

53). ART. 293. The plaintiff (*actor*) is he who institutes any instance, whatever it be; and adversary (*opositor*) he who sustains the instance against the plaintiff. When the second instance is due to a consultation, the Fisc shall be considered as a plaintiff therein.

9, 886.

54). ART. 294. Natural and juristic persons may be complainants and defendants, and appear in court in the terms and with the exceptions established in the substantive law.

81, 82, 83. 73, 633 *et seq.* of the Civil Code. 24, 25 and 26 of Law 57 of 1887. 80 of Law 153 of 1887. 12 of Law 169 of 1896. 1 of Law 62 of 1888.

55). ART. 295. The mandates, orders, rulings, decisions and decrees issued on the petition of a party or *ex proprio motu* by any public official, tribunal or court, or authority in civil or criminal matters, for the purpose of detaining, arresting or imprisoning the Diplomatic Agents of foreign nations, duly accredited near the Government of Colombia, or any of the persons belonging to their families, public retinue or private service, shall have no obligatory value or legal force whatsoever, and on the contrary, shall be absolutely null.

The same is prescribed with regard to orders of any kind which may be made, summoning any of the persons referred to in this article to appear in court or to confiscate, attach or detain their baggage and correspondence, or any other articles destined to their private use, or necessary to the discharge of their functions; and in no case, nor under any pretext whatsoever, shall the dwellings of such persons be searched, nor any act of jurisdiction whatsoever exercised therein.

56). ART. 296. All the officials of any class, or private individuals, who shall, knowingly, solicit, issue or execute the mandates, orders, decrees, rulings or decisions treated of in the preceding article, shall be considered as violators of International Law, and punished as provided in the law on the immunity of the Diplomatic Agents of foreign nations.

(57). ART. 297. The Senators and Representatives of the Congress of

the Union cannot be sued nor have execution levied against them during the time to which the immunity which they enjoy under the Federal Constitution extends.

107 of the present Constitution.

58). ART. 298. Senators and Representatives may be sued, and in the event that during the course of the action it should be necessary to employ legal compulsory process against them, while they enjoy immunity, the Judge or Tribunal shall suspend the course of the cause until the immunity ceases.

59). ART. 299. Whenever in a suit brought by a Senator or Representative, enjoying immunity, the defendant should avail himself of an action of reconvention against him, the proceedings shall be suspended until the immunity of the complainant shall cease.

861, 862, 863.

60). ART. 300. It shall not be understood that Senators and Representatives are *en route* for their domiciles, nor, consequently, that they enjoy the immunity granted them by the preceding articles, when they shall have remained *en route*, in the place where they appear as complainants or defendants, for more than eight days, unless such stay should have been due to sickness.

61). ART. 301. A child under the power of his father shall be represented by the latter, provided that he may have to appear in court as complainant or defendant.

306, 307, 310, 311 of the Civil Code.

62). ART. 302. A minor under tutorship shall be represented in court by his tutor.

480 of the Civil Code.

63). ART. 303. A minor having a curator cannot appear in court without the permission of his curator, upon whom, furthermore, all proceedings in the action shall be served, the same as upon the minor.

480, 529 of the Civil Code.

64). ART. 304. A minor under twenty-one years of age and over fourteen, without a father or curator, who should find it necessary to appear in court, must appoint a curator *ad litem*, or for the action, and should he fail to do so, the Judge shall appoint one.

526, 583 of the Civil Code.

65). ART. 305. A son of a family or minor who, in the absence of his father, tutor or curator, should find it necessary to institute a suit, shall so state to the Judge, who, after ascertaining the facts, shall grant him permission to appear in court, and appoint a curator for the litigation, or confirm the one appointed by the person interested, if more than fourteen years of age.

583 of the Civil Code.

66). ART. 306. No child in the power of his father, or minor having a tutor or curator, can be sued unless the person upon whom he is dependent is in the place where the proceedings are to be held in order that notice of the suit may first be served upon the latter. If this provision be not observed the entire action shall be void.

67). ART. 307. When the father, tutor or curator is not present, and his early return is not expected, the fact having been established by the plaintiff, the Judge shall appoint a curator *ad litem* to the minor, or the one appointed shall be confirmed if he should be over fourteen years of age; and the proceedings shall be continued with this curator, with or without the intervention of the minor, as the case may be.

583 of the Civil Code.

Supplemented by the following:

68). ART. 23 of Law 100 of 1892. The provision of article 307\* of the Judicial Code applies to a case in which a minor is obliged to appear in court against his father or guardian.

In case the child shall desire to sue the father, before the appointment of a curator *ad litem*, judicial permission must be granted him to appear as plaintiff.

When in a universal action the father of the minor should be personally interested in the action, he cannot represent the child, to whom a curator *ad litem* shall be appointed, as provided in the said article.

305 of the Civil Code.

69). ART. 308. A married person over eighteen years of age and a person who has been declared qualified for the free management of his interests, may be complainants and defendants, and in general, appear freely in court, in the same manner as persons of age who are not under the paternal authority.

314 subdivision 2, 339, 340, 343 of the Civil Code.

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\* Ordinal 67.

70). ART. 309. A married woman cannot appear in court as complainant, without the special or general permission of her husband.

181, 185, 186, 188 of the Civil Code.

71). ART. 310. When a suit is brought against a married woman, the husband must be first notified, if the latter should be present in the place where the action is held, unless the wife shall have special permission to litigate, or in general, to do those things which would not be valid without the permission of her husband, in which case there is no necessity for such previous notification.

72). ART. 311. If the husband should be absent and his early return not expected, upon this being established by the plaintiff the Judge shall grant permission to the wife to appear in court, even though the husband should not have been notified of the complaint.

188 of the Civil Code.

73). ART. 312. In case of the absence of the husband, as expressed in the preceding article, the Judge may also grant permission to the wife to sue for and defend her property, upon her showing the necessity of so doing and the absence of an attorney-in-fact constituted by the husband.

188 of the Civil Code.

74). ART. 313. Actions against deaf mutes, the insane, the weak minded and prodigals under judicial interdiction, shall be conducted with their respective curators, and the latter shall represent them in court when it may be necessary for the former to appear as complainants.

531, 545, 553, 557, 598 of the Civil Code.

75). ART. 314. When the Nation or any State is obliged to litigate as complainant or defendant, it shall be represented by its respective Solicitors or *Personeros*.

Supplemented by the following article:

76). ART. 13 of Law 105 of 1890. Whenever a Department or the Municipal Districts may be obliged to appear in court, either as complainants or defendants, they shall be represented by the respective agent of the Department of Public Prosecution (*Ministerio Publico*), or by a special attorney, appointed for the purpose.

Supplemented in its turn by the following article, and by article 12 of Law 169 of 1896.

77). ART. 24 of Law 100 of 1892. The appointment of an attorney in the cases of article 13\* of Law 105 of 1890, shall be made by the respect-

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\* Ordinal art. 76.

ive Agent of the Department of Public Prosecution, with the proper authority, in the form established in Chapter 4, Title I, Book II of the Judicial Code.

Amended by the following article:

78). ART. 3 of Law 50 of 1894. In addition to the powers conferred upon the Municipal Councils by article 208 of the Political and Municipal Code, they shall have the following:

\* \* \* \* \*

3. To appoint attorneys to represent the interests of the respective municipality in the special and determined cases for which the Council may deem proper to appoint them.

These attorneys shall have the character of Agents of the Department of Public Prosecution in the special cases for which they may be appointed.\*

79). ART. 315. Until there should be a judicial record of the fact that the heirs are in possession of the property of the inheritance, the representative of the latter in court shall be the executor, and in the absence of one, the curator or defender who must be appointed by the Judge.

The following article is additional:

80). ART. 14 of Law 105 of 1890. The requisite of the intervention of the heirs present or of the curator of the vacant inheritance, required in certain cases by article 1352 of the Civil Code, shall be understood as complied with by the fact that on the petition of the executor, or of any other of the persons interested, the heirs are notified of the proceedings instituted or action taken by the executor, or to which he is required to answer, as the case may be. Said notice shall be ordered made by the Judge who may have to take cognizance of the matter at first instance.

1353, second par. of the Civil Code.

81). ART. 316. Suits against legitimate communities or associations, that is to say those legally recognized, shall be brought against their syndics, agents, treasurers or persons who represent them in court, in the event that they shall have been established in a known manner; and if not, against the persons at the head of such communities or associations at the place of the action.

54, 129.

82). ART. 317. The same officials shall represent the communities or associations when it may be necessary for the latter to appear in court as complainants.

54, 129. Law 62 of 1888.

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\* Amended in its turn, by article 12 of Law 169 of 1896.



83). ART. 318. What has been stated with regard to communities and associations in general in the two preceding articles, shall be understood to apply to religious communities, associations or sects.

54.

84). ART. 319. Even though there be two or more persons who as tutors, curators, executors, attorneys in fact, syndics, etc., may represent a person, community or association, or appear in court for the same, the proceedings shall be conducted with one of said persons only, to the exclusion of all the others, and all process, to the execution of the judgment, inclusive, shall be served upon said person. This does not include the attorneys in fact (agents) with regard to whom the special provisions of this Code shall be observed.

126, 127.

85). ART. 320. All persons having an interest in the suit may sustain an action as complainants or defendants. When more than two persons appear on each side for the same action, the Judge shall require that, within twenty-four hours, they designate a single individual, either as principal, or as attorney in fact, to continue the action with such person the results of which shall indistinctively affect all those who may have entered an appearance.

86). ART. 321. Any doubt in the judicial procedure, either as to the consideration of the facts, or as to the application of the law, shall be decided in favor of the defendant, in the absence of other principles established in the law.

#### CHAPTER IV.

##### *Attorneys in Fact.*

87). ART. 322. Both the complainant and the defendant may initiate and prosecute a suit through another person, which person shall be called a judicial attorney in fact (*apoderado*) if appointed with the legal formalities.

131, 132, 85.

88). ART. 323. Minors, a married woman, and in general persons dependent upon others, may appoint attorneys in fact, acting in accordance with the provisions of this Code with regard to the same in the event that it shall be necessary for them to appear in court, as for such purpose, the act of executing a power of attorney is considered a judicial act.

61 to 65, 67, 70, 72, 73, 74, 129.

89). ART. 324. Any male qualified to appear in court may be a judicial attorney in fact, with the exception of those not in the enjoyment of their civil rights, and the others expressly excepted in this chapter.

61 to 65, 91.

90). ART. 325. A woman may act only under a power conferred by her parents or her husband, and this in the event of being imprisoned, sick or incapacitated in any other manner, and that, by reason of her poverty or another similar cause, she have no other person available, without prejudice to the right to appear and make statements and furnish bail in the same cases.

91). ART. 326. By reason of their offices, the officials referred to in article 206 cannot be attorneys in fact; and when it shall become necessary for them to appear in court for private affairs, as complainants or defendants, they shall do so through attorneys in fact, as there provided.

92, 93.

#### SEVENTEENTH AMENDMENT.

(Of Law 53 of 1882.)

92). ART. 327. All public officials of the federal order are forbidden to accept and exercise powers in the administrative or judicial representation of the affairs of private individuals before the authorities or functionaries of the Union.

Supplemented by the following article:

93). ART. 17 of Law 105 of 1890. The officials of the Judiciary and those of the Department of Public Prosecution, even though they should be on leave of absence, cannot exercise any powers in judicial or administrative matters, nor appear as advocates in judicial matters. This prohibition extends to those under fourteen years of age, as those over this age may, with the permission of their curator, appear in their own affairs. This prohibition also applies to those who may be under judicial interdiction and the Ministers of the cults.

The officials of the judiciary cannot be agents in affairs of any character, nor testamentary executors or administrators.

91.

94). ART. 328. The general powers for suits, which are those by which the attorney in fact is authorized to represent the principal in any action brought by or against him, can be conferred only by means of a public instrument, executed with the formalities required by the laws.

97, 98, 102, 120, 125.

95). ART. 329. Special powers, which are those that only authorize the attorney in fact to represent the principal in a specific suit, may be executed in any of the following ways:

1. By a public instrument.
2. By means of a memorial which the principal in person shall deliver to the Secretary of the Tribunal or Judge which is taking or may take cognizance of the cause, and at the foot of which said official shall make a note stating that it was presented by the principal in person on such a date. The memorial shall contain the designation of the Tribunal or court to which it is addressed, the name and residence of the principal, the name and residence of the attorney in fact and a very clear determination of the suit for which it is granted.
3. By means of a memorial, drafted in accordance with the provisions of the preceding subdivision, delivered in person by the principal to the national Judge of his domicile, when he does not reside in the place where the proceedings are held. Said memorial must be addressed, as in the preceding case, to the Judge or Tribunal which is taking or may take cognizance of the cause, and at the foot thereof the national Judge to whom it may be presented shall attach a note to the effect that said memorial was presented in person by the principal to the said Judge and his Secretary, both of whom shall sign the note.

#### SIXTEENTH AMENDMENT.

(Of Law 53 of 1882.)

§ When the principal does not reside in the place where the respective national Judge may be, he may present the memorial referred to in this paragraph, to the Judge of the District in which the principal may be, and the Judge shall affix the note of personal presentation in accordance with the provisions respecting Judges. After this shall have been done, he shall transmit the memorial to the respective national Judge, in order that he may authenticate the presentation, and said memorial, thus authenticated, shall have all legal effects.

96, 98, 102, 120, 321.

The following article is supplemental:

96). ART. 18 of Law 105 of 1890. The parties or their attorneys in fact may, verbally or in writing, appoint defenders or patrons (*patronos*) for acts which are to be performed verbally. If they appoint them in writing, they shall do so by means of a memorial addressed to the Justice or Judge taking cognizance of the cause, and which the said defenders or patrons may present.

97). ART. 330. The general powers shall contain, in addition to the designation of the principal and of the attorney in fact, with an indica-

tion of the residence of each and that it is conferred for all litigation to which the principal may be a party, the other formalities which are required by law for the validity of public instruments.

94.

98). ART. 331. In addition to the signature of the principal, the power of attorney may bear that of the attorney in fact, as a proof of his acceptance. If this signature should not appear, the Judge or Tribunal taking cognizance of the cause shall direct that the power be communicated to the attorney in order that he may state whether he accepts it or not, and until this shall be done the Judge shall not make any order directing that he be considered as such attorney in fact. Without such order, the attorney in fact shall not be considered as a party to the action.

100, 821, subdivision 2.

#### FOURTH AMENDMENT.

(Of Law 46 of 1876.)

99). ART. 332. The Judge or Tribunal taking cognizance of the cause, whenever a power is presented to the same, shall examine whether it has been conferred with the legal requisites and shall return it if any should be lacking. In addition, when it is admitted, the court shall direct that the opposite party be informed thereof, and if such party should not plead within twenty-four hours that the power of attorney is improperly conferred by reason of its lacking some of the requisites prescribed by the preceding articles, its nullity cannot subsequently be pleaded, nor can the proceedings had be annulled by reason of an insufficiency of representation (*personeria*).

821.

100). ART. 333. It shall be understood that the attorney in fact accepts the power if he should use it; and by accepting it, he assumes the duties which are imposed by the laws upon judicial attorneys in fact.

98.

#### THIRD AMENDMENT.

(Of Law 53 of 1882.)

101). ART. 334. The attorney in fact may substitute the power, even though special power for this purpose may not have been conferred upon him therein.

102, 106, 108, 109, 110.

102). ART. 335. The substitution must be made in the same manner as the power was executed, that is to say, by means of a memorial, when the power shall have been conferred in this manner, and by a public instrument, if thus conferred. Nevertheless, the general power may be substituted by a memorial or public instrument, when special for each suit.

103). ART. 336. Of every power conferred by means of a memorial, the Secretary to the Judge taking cognizance of the cause shall make a copy after its presentation, and shall do the same with the substitutions executed in this manner. Said copies shall be kept together with the copy of the complaint.

344, 846.

104). ART. 337. The powers executed in a foreign country in order to be exercised in Colombia, must be drawn up in accordance with the formalities required in the place where conferred; but they must, in addition, be authenticated by the diplomatic or consular employee of Colombia resident in said place, and in the absence of such officials, by the Consul or Minister of a friendly nation.

550, 759.

Supplemented by the following articles:

105). ART. 13 of Law 124 of 1890 (*on the intestate succession of foreigners*). Powers of attorney, certificates of the registry of civil status and other documents executed in a foreign country, which the interested persons may produce before the Courts and Tribunals, for the purpose of establishing their rights, shall be valid if they bear the authentications required by the Colombian laws. If authenticated in this manner, it is presumed that they are issued in accordance with the local law of their origin, unless an interested party should prove the contrary.

106). ART. 338. Powers for suits confer upon the attorney in fact the authority necessary to institute and prosecute the suit to its termination, as if he were the principal; being able to exercise all the rights conferred upon the latter in his capacity of litigant. But in order to substitute the power, abandon the suit, or conclude it by compromise, the attorney in fact requires special and express power.

101, 108, 110, 132, 594.—See also Law 169 of 1896, art. 14.

107). ART. 339. The attorney in fact may answer interrogatories, if he should have instructions therefor from his principal. If he should not have such instructions, or if the party presenting the same should demand that they be answered by the other personally, the latter must

make reply thereto whether he be in the place where the proceedings are held or not.

108). ART. 340. In order to substitute a power of attorney, when an express power shall have been conferred therefor, it is not necessary that the attorney in fact have accepted or exercised the power of attorney.

101, 106.

109). ART. 341. A power of attorney having been substituted, the attorney may re-assume it if the substitute should not accept, or renounce it or fail in any other manner.\*

#### FOURTH AMENDMENT.

(*Of Law 53 of 1882.*)

ARTICLE. Article 275 of the Code is repealed.†

110.) ART. 15 of Law 105 of 1890. The attorneys in fact and the substitutes may revoke the substitutions which they may make and those emanating therefrom, and again exercise the power or substitute it, even though they shall not have reserved these powers expressly.

111). ART. 342. No attorney in fact is responsible for the consequences of the suit if he shall not have bound himself expressly therefor. But he must defray the expenses necessary for the continuation of the business, reserving his right against the principal.

112). ART. 343. The attorney in fact is responsible for the amount of the adjudication of costs in the following cases:

1. When the principal does not reside in the place where the costs are to be collected, and the attorney in fact should be constituted there; but the liability of the latter shall cease if a month having elapsed since the notification of the judgment, this right should not have been enforced against him; and

2. When the attorney in fact shall have bound himself in the power of attorney to pay the judgment, or the costs only.

113). ART. 344. After the attorney in fact shall have appeared in court in the name of his constituent, he can no longer withdraw voluntarily, but he shall be obliged to conclude the litigation, unless his power be revoked, or he should substitute or renounce it with legal cause, or with the consent of the principal. If he absent himself or withdraw arbitrarily or without the constituent having appointed another attorney in fact, he shall always be subject to the liability imposed upon him by the preceding article, in addition to that which, in a proper case, can be

\* Subrogated by ordinal 110.

† Said article is as follows: "Art. 275. The substitute cannot substitute."

enforced against him by the principal by reason of the abandonment of the charge.

122.

114). ART. 345. As a general rule, no one can represent another in court unless it be under a power of attorney executed with the legal formalities; but in order to make answer to a complaint, after it shall have been served upon the interested party, and take an appeal, when a failure to do so should entail a grave injury to the party, a power is not necessary: any one may do so, upon furnishing surety to the satisfaction of the Judge that the party for whom he speaks will approve it as if done by himself.

90, 130.

115). ART. 346. A person may also appear in court without a power of attorney for his relatives within the fourth degree of consanguinity, or second of affinity; the wife for her husband in the cases of article 312,\* and the co-owner of the same tenement or of another thing for his co-owner or participant, in an action involving the thing held in common, provided that the person interested should be absent or prevented from appearing, and that he will suffer damage if the suit should not be instituted or the action prosecuted. But the person thus appearing in the name of another, must furnish the surety referred to in the preceding article, whenever the opposite party shall require it before the expiration of a month from the time the person acting for his relatives or co-owner shall have entered an appearance in the action.

130.

116). ART. 347. The attorneys in fact may stipulate with their principals, without restriction, what the latter are to pay them as compensation for their services. In the absence of any agreement, said compensation shall be fixed by two experts appointed, one by the principal and the other by the attorney in fact, and in the case of disagreement between the experts, or in the event that either of the parties should not appoint an expert, the Judge shall appoint the person who is to settle the disagreement or fill the vacancy.

487, 488.

117). ART. 348. The following are the obligations of the judicial attorney in fact:

1. To exhibit the power upon entering an appearance in the suit.
2. To conform strictly to the terms of the power of attorney, and the instructions which the principal may have given him.

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\* Ordinal 73.

3. To return in due time the records which he may receive in the office of the Secretary of the respective Tribunal or court.

4. To be very active and diligent in the discharge of his duties, under the rules which may have been laid down for him.

5. To preserve faith to the party whom he may represent, abstaining from revealing his secrets, under the penalty imposed upon those guilty of dereliction of duty.

6. To preserve in order and good condition and return in due time the documents which he may receive from his principal.

118). ART. 349. The attorney is responsible for delay or the inexcusable loss of processes, provisions and instruments, the same as the parties.

122.

119). ART. 350. Any power may be revoked without restriction by the principal; but when the latter should do so, he must appoint another attorney in fact to continue representing him in court, or inform the respective Judge or Court that he will continue the suit in person, designating in such case the house where notices are to be served. The Judge, in granting the revocation of the power, shall indicate the person with whom subsequent proceedings in the suit are to be had.

120, 121, 126, 123.

120). ART. 351. The revocation of a general power must be made by means of a public instrument, and that of a special power may be made by a public instrument or by a memorial presented in the same terms as that by which the power was constituted.

The following article is additional:

121). ART. 16 of Law 105 of 1890. The revocation of a general power produces its effects, with regard to a third person, whenever it be proved that he had due knowledge thereof.

If the public be advised in the official newspaper of a Department of the revocation of a general power of attorney, the latter shall go into effect with regard to the residents of the said Department, thirty days after the publication. If such publication should be made in the official periodical of the Nation, the effects of the revocation shall be produced throughout the Nation three months after the publication.

119.

122). ART. 352. The attorney in fact may also renounce the power with just cause, such as sickness, the necessity of absenting himself, or to avoid grave injury to his interests; and in such case he must advise the constituent in order that he may appoint another attorney, or state that



he will continue the suit in person. If the party should fail to do so, the subsequent conduct of the attorney in fact shall be to his prejudice.

113, 123.

123). ART. 353. He who shall have litigated once in person or through an attorney in fact, shall not be considered as separated from the action until the person who is to take his place shall appear of record.

122.

124). ART. 354. A power of attorney for suits terminates by the death of the constituent in every case, and also by the death of the attorney, if the complaint shall not have been answered; but if the answer should already have been made, the attorney shall continue to represent the heirs of the constituent, until they shall revoke his power or until the latter terminates for another legal cause.

In summary actions and in all other suits in which there is no answer to the complaint, the power of attorney terminates by the death of the constituent before service of the complaint upon the defendant.

125). ART. 355. General powers for suits may be granted for a determinate period, upon the termination of which the attorney in fact cannot begin a new suit; but such suits in which an answer shall have been made to the complaint, must continue, without the necessity of a new power.

94.

126). ART. 356. A party who shall have appointed an attorney for a suit, may appoint another attorney for the same matter; and in such case the presentation and admission of the new attorney shall be construed as a revocation of the previous power. The parties who may have appointed attorneys may also personally enter an appearance in the suit, without such action implying a revocation of the power, unless an express statement be made that it is revoked.

§. Likewise an attorney may be appointed for the first instance and another one for the second, or for an appeal from any decision, without such action implying a revocation of the power conferred for all the acts in the suit before the Judge of first instance.

119.

127). ART. 357. More than one attorney for the same suit cannot be appointed, and if several should have been appointed in the same power of attorney, the first one shall be considered as the attorney in fact and the remainder as substitutes, in their order, in the event of the absence or impediment of the first attorney.

126, 84, 85.

128). ART. 358. The attorney in fact of the complainant in a suit is obliged to answer and prosecute the suit in reconvention which the defendant may institute against him.

129). ART. 359. The officials who, according to this Code, represent in the place of the action legally incorporated associations or communities, or those who in the absence of the former represent them in any other place, may appoint attorneys in fact should they not desire or be unable to appear personally in court, whether as complainants or as defendants.

87, 88.

130). ART. 360. If a person shall have prosecuted an action in the name of another without a power of attorney executed with the legal formalities, what he may have done shall be valid if ratified by the party as done by said party, provided that such ratification take place before the rendition of the final judgment at last instance.

114, 115, 821, subdivision 3.

131). ART. 361. No association, community or company can be a judicial attorney in fact.

87.

132). ART. 362. All that may be said of the parties is understood as said of the judicial attorneys in fact when the law makes no express distinction.

106, 594, 599.—See also Law 169 of 1896, art. 14.

## CHAPTER V.

### *Accessory actions of the complainant.*

#### § 1.

### *Attachment of Persons (Arraigo).*

133). ART. 363. Before or after the filing of a complaint, the person interested may request the attachment (*arraigo*) of the person whom he has sued or is about to sue; but herefor it is necessary that he prove summarily that such person is his debtor, and that there is reason to fear that he may absent himself to the prejudice of the creditor.

138.

134). ART. 364. The petition for attachment having been made, the Judge shall immediately serve notice upon the debtor, proceeding to his

house if necessary, in order that he may furnish bond, which shall consist of mortgages or pledges whose value is sufficient to cover the results of the suit, or a sufficient surety who shall become liable for the amount of the judgment which may be obtained.

135). ART. 365. The attachment obliges the debtor to remain in the place of the action during its course, and he cannot absent himself without the permission of the Judge and without leaving an attorney duly instructed and provided with funds and subject to the result of the action, furnishing a surety, to the satisfaction of the Judge, to answer that the attorney will perform the duties imposed upon him; but neither the debtor, nor the attorney, nor the surety can be confined, detained or arrested.

136). ART. 366. If the person subject to the attachment should absent himself notwithstanding the security given not to leave the place where the suit is pending, he shall be adjudged to pay what may be demanded as stated in the petition for his attachment, without prejudice to the penalty which, by reason of disobeying the Judge, the person subject to the attachment may have incurred; and to his arrest by any of the Judges or authorities *en route*, by virtue of a requisition issued by the Judge who decreed the attachment, after the institution of the criminal proceedings which may lie, and without prejudice to the party interested bringing the civil action which may lie.

137). ART. 367. It shall be understood that the person attached has absented himself, for the purposes of the preceding article, when, having been summoned on the petition of the complainant by a personal citation or a writ left and posted in the dwelling place of the person subject to attachment, if he should not be found, and after having called upon his surety, and granted him a term of one day to produce him, he should not within two days bring him before the Judge or his Secretary.

138). ART. 368. If eight days shall have elapsed since the attachment was ordered and the complainant should not have instituted his action, the Judge shall declare the attachment vacated, and cannot again decree it for the same reason, and the person attached shall be entitled to the recovery of loss and damages.

139). ART. 369. When the debtor shall not have or shall not desire to furnish realty, nor pledges, nor a sufficient surety to answer for the results of the suit, the intimation of the Judge shall be sufficient to prevent him from absenting himself from the place, and if he should absent himself before the conclusion of the suit, the Judge shall proceed against the defendant in accordance with the provisions of article 366.\*

140). ART. 370. The defendant whose attachment may have been requested, shall have the right to demand that the complainant or plaintiff secure to the satisfaction of the Judge the loss and damages

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\* Ordinal 136.

occasioned by the attachment, in the event that the charge against the defendant should be dismissed. If the complainant should not furnish the security stated, the defendant is relieved from the security and obligation of the attachment.

141). ART. 371. The order or intimation of attachment may be appealed from in a devolutive effect only, it being necessary to apply to the superior authority with a copy of what may be pertinent, made at the cost of the appellant.

## § 2.

### *Deposit or Sequestration.*

142). ART. 372. In order to avoid that the suit be illusory in its effects, if the thing sued for were a movable or live stock, and there is reason to fear that the person having possession thereof may remove, damage or dissipate it, this being proved by the plaintiff by means of the summary testimony of two or more witnesses, the Judge shall order that the thing be deposited or placed in sequestration, under the charge of a responsible person enjoying good credit.

Expressly repealed by article 338 of Law 57 of 1887, and subrogated by the following:

143). ART. 19 of Law 105 of 1890. In order to avoid that the suit be illusory in its effects, when the movable things the subject of the suit or which it is desired to recover judicially, can be removed, transported, concealed, damaged or dissipated, the person believing himself entitled to their recovery, may demand of the Judge of the place where the things may be, and after swearing not to proceed maliciously, the sequestration or deposit thereof in safe hands; a deposit which shall be carried out wherever the person petitioning therefor presents a solidary surety, to the satisfaction of the Judge, to answer for the loss and damage which the deposit or sequestration may cause.

146, 147, 154, 158, 159.

Supplemented by the following article:

144). ART. 20 of Law 105 of 1890. In the cases of the preceding article and of article 374\* of the Judicial Code, a request may be made of the Judge of competent jurisdiction to take cognizance of the cause, to direct the deposit or sequestration of the movable property of the defendant, even before the institution of the suit; and this having been done, it shall be vacated if the person who requested it does not present to said Judge the proper complaint within three days next after the deposit was made. If the complaint should not be presented within the period fixed, the person obtaining the deposit shall be obliged to in-

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\* Ordinal 146.

demnify the damages which the respective person interested may prove that he suffered.

158, 159, 160.

145). ART. 373. If the thing sued for were realty, and the complainant should have obtained a decision in his favor in the first instance, the thing shall also be placed in sequestration, if there should be reason to fear that the person in whose possession it may be will damage it, or sell or dissipate its fruits.

154, 158, 159.

146.) ART. 374. The deposit of the property of the defendant may also be decreed, to an amount sufficient to cover the sum sued for and the costs, in the event that the complainant prove, even though in a summary manner: 1. That he actually is the creditor of the amount sued for; and 2. That the debtor intends to damage, remove, misappropriate or alienate his property, or that such property is in such a bad condition through his maladministration, that it is liable to disappear or not be sufficient upon the termination of the suit to pay the debt and the costs.

144, 158, 159.

147). ART. 375. The provisions contained in the following articles shall be observed in every case of a judicial deposit.

148). ART. 376. When the deposit or retention of the salary of an employee or of any other wages, pension or emolument is ordered, only one-half the amount thereof shall be affected.

149). ART. 377. Any excess in the deposit renders the Judge liable, and the decree ordering such deposit must be amended as soon as the excess is established in a summary manner.

150). ART. 378. When the property ordered deposited should be in the possession of a third person and an order is issued to the latter to retain the same, he shall be constituted a depositary or sequestrator, with the legal obligations.

151). ART. 379. The Judge to whom another Judge shall communicate the retention of some property or rights of the defendant, must enforce it, for the results of the suit in which it was decreed.

152). ART. 380. The deposit shall never be ordered in a civil cause without a petition of a party, reserving the cases expressly excepted in this Code. Any incidental issue relating to the deposit shall be kept in a separate record, it shall not stay the principal cause, and upon the conclusion of the incidental issue, the record thereof shall be embodied in the process.

153). ART. 381. If the sequestration of realty should be requested, it shall be decreed after a hearing of the defendant and the person holding the estate, to each of whom the request therefor shall be referred for a period of forty-eight hours; and if either of them should object, the Judge shall take evidence upon the issue for a period of three days, upon the expiration of which he shall pass on the sequestration. The ruling upon the sequestration may be appealed from in a suspensive effect by the defendant, and by the other persons interested in a devolutive effect only.

For the purposes of this article as movables are considered all vessels, whatever be their class or size. They may, therefore, be sequestered without a hearing of the opposite party; but the sequestration of a vessel about to sail shall not be ordered unless security be furnished to answer for the results of the suit, to the satisfaction of the Judge and under his liability.

158, 159.

154). ART. 382. The sequestration having been ordered, before being carried out it shall be communicated to the party against whom it may have been requested, if present; and it shall be suspended at any stage, if the person responsible shall furnish security to the satisfaction of the Judge, or deposit in money a sum equal to that which it is desired to secure by the sequestration.

158.

155). ART. 383. An inventory shall be made of the things sequestered, which shall be added to the record. The inventory shall be subscribed by the Judge, the parties and the sequestrator or sequestrators, and shall be authenticated by the Secretary of the Judge.

159.

156). ART. 384. The sequestrators of industrial establishments or of estates (*haciendas*) of any kind, have, in addition to the general obligations of depositaries, the special obligations not to interrupt the works of the establishment or estate, see to the preservation of all the assets, keep a punctual and daily account of all the receipts and disbursements, prevent any disorder, keep in deposit the free part of the products, after deducting the costs of production, and to furnish an account and statement of the trust upon the conclusion thereof, and whenever called upon to do so.

987, 1097.

157). ART. 385. Either of the parties may demand the removal of the sequestrator, by summarily proving malversation or abuse in the discharge of the trust. This issue shall be heard and decided as an ordinary interlocutory issue and with the hearing of the sequestrator.

The four articles which follow are additional:

158). ART. 21 of Law 105 of 1890. The judicial deposit consists in the actual delivery which the Judge makes to the depositary of the thing whose deposit has been ordered. The deposit shall not, therefore, be considered as made by the statement of the depositary that he considers the thing received. If the property to be deposited should be real, the delivery thereof to the depositary shall be effected with a citation of the adjoining owners who may be on their respective tenements at the time the deposit is effected.

150, 151, 1068. 2329 and 2276 of the Civil Code.

159). ART. 22 of Law 105 of 1890. A judicial deposit having been made, a record of the act shall always be made, evidencing the actual delivery of the thing to the depositary. Such copies shall be made of this record as the depositary or the parties may request, which copies shall be authenticated by the Judge and the Secretary.

The Judge or Justice authorizing a deposit, shall be liable for the crime of falsity if from the record of the deposit the actual delivery of the thing shall appear, without such delivery having been made.

160). ART. 23 of Law 105 of 1890. The judicial deposit terminates by virtue of the actual delivery of the thing deposited to the person to whom it may correspond; a delivery which shall be made by the Judge of the cause, even though the thing should be in the possession of another depositary appointed in another action, unless the latter depositary shall present a copy of the record of the deposit made with him, of a date prior to that which the Judge making the delivery may have made. If the depositary opposing the latter should present such copy, of a prior date, the delivery shall be stayed; but the Judge shall adopt the measures which he may deem proper to convince himself that such copy is authentic and that the deposit to which it refers still continues. If either of these two conditions should be absent, the Judge shall consummate the delivery decreed, and shall impose a fine of one hundred pesos upon the depositary who opposed it.

161). ART. 24 of Law 105 of 1890. The delivery of a thing which was deposited, shall be rescinded at once, without hearing any person, if there be presented to the Judge who may have made it an authentic copy of a record of a deposit of a date prior to that established by the said Judge in the suit in which the delivery may have been made; but there must appear at the foot of the said authentic copy, even though the paper be not competent, a certificate authorized by the respective

Judge and his Secretary, with a statement of the date, in which it shall appear that the deposit to which the record refers still subsists. Without this requisite, the said copy shall produce no effect.

The rescission referred to may be requested by the plaintiff, the auctioneer (*rematador*), the person who by a judgment may have been declared as entitled to the thing, and subsidiarily the original depositary. In the certificate referred to in the preceding paragraph, the character of such persons shall be stated.

### §3

#### *Exhibitory Action.*

162). ART. 386. The defendant is obliged to exhibit to the Judge the thing for which he is sued, in the presence of the plaintiff, when the latter shall so require.

168.

163). ART. 387. When the thing sued for is confounded with one or more others of the defendant's, so that the exhibitory action cannot be carried out without the presentation of all of these things, the defendant may be obliged to present them all.

164). ART. 388. If the thing the subject of the suit should be realty and the plaintiff should request that the holder thereof grant him permission to enter thereon to take measures, examine the boundaries or for any other innocent purpose, useful to the petitioner, the Judge shall grant the request with the precautions and warnings necessary, in order to avoid loss and damage to the possessor.

165). ART. 389. He who shall have a testament in which another shall claim to be an instituted heir, or have an interest, and in general, every person who by reason of interests, company or another similar cause shall have in his possession documents from which others can deduce effective rights, shall be obliged to present them.

166). ART. 390. Persons not litigating shall not be obliged to exhibit private documents or correspondence of their exclusive ownership, reserving the right vested in the person who may need them, which he may enforce in the respective suit. If they should be disposed to exhibit them voluntarily, they shall not be obliged to produce them in the office of the Secretary, but at their request the Secretary shall proceed to their houses or offices to make certified copies thereof.

167). ART. 391. The party having in his possession documents or other objects which the opposite party may deem conducive to a proof of his rights of action or exceptions, is obliged to produce them before the Judge, and permit that copies thereof be made, whenever the party



interested shall so request, stating what he intends to prove with the document or thing requested.

If the party in possession of the document or thing whose exhibition is requested, should not present it, as stated, the act which it was desired to prove with said documents shall be considered as proved, after full and sufficient proof of the document or thing solicited being in the possession of the said party.

168). ART. 392. In all the cases mentioned in this paragraph, the individual who shall refuse to make the production judicially decreed, shall be liable for the consequent damages to the party who may have requested the production, after full proof that the thing which he refuses to produce is in the possession of said individual.

169.

169). ART. 393. All that relates to the exhibitory action shall be considered as an incident of the principal action, and shall be heard and decided as an ordinary interlocutory issue, excepting the action for damages referred to in the preceding article, which shall be heard as an ordinary action, for the purpose of fixing the amount of damages.

584, 839

§4.

*Assent (Asentamiento).*

170). ART. 394. If within the term granted the defendant by this Code to make answer, he should fail to do so, the plaintiff may avail himself of the way of assent or proof in default.

176.

171). ART. 395. The way of assent consists in the seizin and possession which the Judge gives the plaintiff of the thing he claims, or of some property of the defendant by reason of the default of the latter in failing to appear or not making answer to the complaint.

172). ART. 396. When the suit is based upon a real right of action, the thing sued for in the said case of default on the part of the defendant, shall be delivered to the plaintiff, and when it is based upon a personal right of action, movable property or, in the absence thereof, real property belonging to the defendant shall be given him, to the amount of the debt.

173). ART. 397. If the defendant should appear to answer the complaint within two months after the conclusion of the term within which he should have done so, if the action were a real one, and within a month, if it were a personal one, the effects of the default shall cease, and his

property shall be returned to him, the cause being continued according to the ordinary procedure.

174). ART. 398. Should the defendant fail to appear within the term mentioned in the preceding article, the plaintiff shall be considered the real possessor of the property, and shall not be obliged to answer to the defendant as to the possession thereof, but as to its ownership only.

175). ART. 399. If the defendant should have an attorney or legal representative in the place where the proceedings are held, he may proceed against the latter for the value of the damages which he may have suffered by reason of the assent for which said attorney or representative may have been responsible, through his negligence in making answer to the complaint.

### §5.

#### *Proof in Default.*

176). ART. 400. If the complaint having been served upon the defendant, the latter should not make answer thereto within the legal term, if the complainant should prefer to the way of assent, the proof in default, he shall request judgment in default against the complainant, requesting that the cause be continued with service of process in the room of the court or Tribunal.

844, 847, 854 to 857.

177). ART. 401. If the plaintiff should avail himself of the right granted him in the preceding article, the Judge shall consider the default to be admitted, and shall order that the subsequent proceedings in the case be served in the room of the court or Tribunal.

857.

178). ART. 402. After the order referred to in the preceding article shall have been made, notice of all the proceedings in the action shall be served upon the defendant by means of an edict which shall be posted on the main door of the court or tribunal room for twelve hours, and notices served in this manner shall have the same effects, to the prejudice of the defendant, as the law assigns to personal service.

179, 180, 181, 194, 195.

179). ART. 403. In the case referred to in this paragraph, notice shall only be served on the defendant in person, or upon a member of his family or in his service who may be found in his house, of the order directing the taking of evidence in the cause, the definitive judgment, and the decision declaring the latter to be final.

180 181, 195 subdivision 3.

180). ART. 404. If the defendant should not reside in the place of the action, the necessary communications or letters rogatory shall issue for the purpose of making the notifications referred to in the preceding article.

181). ART. 405. If the house of the defendant should be closed, and it should not be possible to have it opened, notices of the order directing the taking of evidence, of the definitive judgment and of the decree declaring the latter final shall be served by means of a writ posted on the main door.

182). ART. 406. At any time that the defendant in default should enter an appearance, while the suit is still pending, he shall be heard and justice administered; but he shall not have the right to have the proceedings begun *de novo*, as such terms which may have expired shall be considered as legally elapsed, in accordance with the provisions of this paragraph.

## §6.

### *Suspension.*

✓ 183). ART. 407. The complainant has the right to request of the Judge that the defendant suspend during the suit any transaction or industrial operation which might prejudice his rights, such as a sale, assignment or change in the form of the thing the subject of the suit.

187, 191.

184). ART. 408. The complainant having proved or shown the damage which might result to him by virtue of the transaction or operation whose suspension is requested, the Judge shall decree it, requiring the complainant to furnish a bond to the satisfaction of said Judge to indemnify the defendant for any damage resulting from the suspension, if the final judgment in the main suit should be in favor of the defendant.

185, 188, 189, 190.

185). ART. 409. If the complainant should not furnish the bond referred to in the foregoing article, within the term which may have been granted him for the purpose, the suspension decreed shall be vacated at once.

186). ART. 410. The bond having been furnished, the suspension shall continue during the entire time of the suit.

187). ART. 411. If the complaint shall not have been filed, the petition for suspension shall not be admissible.

188). ART. 412. The decree of suspension shall be served upon the defendant and upon all the other persons upon whom it may be necessary to make such service, in order that it may be duly complied with.

189). ART. 413. The decree of suspension may be appealed from by the complainant, but in a devolutive effect only. The decree denying the suspension may also be appealed from by the plaintiff, in the effects which he may desire.

190). ART. 414. At any stage of the suit, the defendant may cause the suspension to be raised, upon giving bond to the satisfaction of the Judge, to compensate the complainant for all damages.

The same right to cause the suspension to be raised, under the condition aforesaid, is granted to any person who may be prejudiced thereby, even though such a person be not the defendant.

191). ART. 415. The right granted the defendant in this paragraph cannot be made use of against the Nation.

## CHAPTER VI.

### *Notifications and Citations.*

192). ART. 416. When the parties shall not appear in the office of the respective Secretary to receive the notifications, one day after the publication of the order notice of which is to be served, such notice shall be served by means of an edict, which shall be posted in the office and in a public place during the office hours of a natural day; in which edict shall be inserted the date and the resolutive portion of the order or decision. This edict shall be made a part of the record with a memorandum of the day and hour it was posted and removed, and there shall be included in the said record also a certificate of the posting, with a statement of the day and hour when made. The notice shall be considered as having been made from the date of the removal.\*

## FIFTH AMENDMENT.

*(Of Law 46 of 1876.)*

193). ART. 417.† From the provisions of the preceding article are excepted the notices which follow, which shall be served personally: 1. That of the order directing the reference of a complaint; 2. That of the order directing that the party or parties be notified of the nullity of a suit by reason of causes 2 and 4 of article 914, and the first causes of articles 915 and 916 of the Judicial Code; 3. That of the order directing the citation of a party for the purpose of answering interrogatories, in the cases of articles 439 and 440; and 4. That of the decisions in a

\* Expressly repealed by article 338 of Law 105 of 1890, and subrogated by ordinal No. 194.

† Expressly repealed by article 338 of Law 105 of 1890, and subrogated by ordinal No. 195.

special proceeding which, in accordance with the Judicial Code, must be served personally.

The notices to be served upon the person representing the Department of Public Prosecution, in the causes in which he takes part, are also excepted, and service thereof shall be made in accordance with the provisions of No. 4 of article 1491 of the Judicial Code.

When the notices are not served upon the representative of the Department of Public Prosecution, as prescribed in No. 4 of article 1491, the proceedings had shall be annulled if the notice refers to a decision of those which, in accordance with articles 914 and 917, cause the nullity if notice thereof be not served.

The following article subrogates ordinal No. 192.

194). ART. 31 of Law 105 of 1890. When the parties shall not appear in the respective Secretary's office to receive the notifications, one day after the decision of which notice is to be served shall have been authorized by the court or Judge and Secretary, notice thereof shall be served by means of an edict which shall be posted in the office and in a public place during the working hours of a natural day; this edict shall include the date and the resolutive portion of the decree or decision, so that the entire context thereof may be visible. This edict shall be attached to the record, with a note of the day and hour of its posting and removal, and there shall be embodied in the same record a certificate of the posting thereof with a statement of the day and hour when made. The notice shall be considered as served from the hour of the removal.

199, 205, 222.

The following article subrogates ordinal No. 193:

195). ART. 32 of Law 105 of 1890. The following notifications, which shall be served in person, are excepted from the provisions of the preceding articles:

1. That of the order directing the reference of a complaint.
2. That of the order directing the citation of a party for the purpose of replying to interrogatories.
3. Those of the orders or decisions which by virtue of a special provision must be served in person, and
4. Those of the orders or decisions notice of which is to be served upon the representatives of the Department of Public Prosecution.

197, 203, 222, second par., 223, 831, 1491.

196). ART. 418. The provisions of the two preceding articles do not apply to universal actions, in which notices shall be served in the form prescribed therefor.

197). ART. 419. Personal notifications are served by communicating the decision, order or ruling of the Judge to those who are to be notified thereof, a return being made, stating in letters the year, month, and even the hour, if necessary, all of which shall be signed, with their surnames, by the person notified or a witness for him, if he should not know, not be able or not wish to sign, and the Secretary making the notification, the latter stating, under his name, that of the office.

196, 206-210, 225.

The two articles which follow are additional:

198). ART. 33 of Law 105 of 1890. The Secretaries of the Courts and of the Superior Tribunals, may, through an employee of the Court or Tribunal, respectively, and under the liability of said Secretaries, have the personal notifications served which the law prescribes, and which they cannot execute in person.

225.

199). ART. 38 of Law 105 of 1890. A personal notification must be given the preference in every case, to a notification by edict. Consequently, if the respective persons interested, or any of them, should appear in the office of the Court or Tribunal before the notification of an order or decision is made by edict, the Secretary must serve the notification personally.

If the edict should already have been posted, the notice of the order or decision shall also be served personally upon the person interested who may appear to receive it. The provisions of this article are not a ground to delay the notification by edict to those who do not appear.

194, 205, 222, 1219.

200). ART. 420. Citations shall always be made by means of notifications.

201). ART. 421. The effects of the notification of the reference of a complaint are: 1. To confer the cognizance of the matter to the Judge to whom the complaint shall have been presented; 2. To interrupt the time for the prescription of the action or thing sued for; and 3. The other effects prescribed by law.

844, 847, 265, 865. 2522, 2524, and 2539 of the Civil Code.

202). ART. 422. The Secretaries, by means of a permanent notice, affixed on the door of the office of the Secretary, shall inform the public of the hours established for the service of notifications; but this statement shall not include the hours of the night.

203). ART. 423. The parties and their attorneys are obliged to inform the Judge of the cause, of their dwelling place, and should they not have any, of the designation of the house in the place where the notifications are to be served on them. This designation must be made by the complainant as soon as he institutes the suit, and by the defendant or adversary, as soon as the first notice is served on him.

195 and citations, 261 subdivision 2.

#### FIFTH AMENDMENT.

(*Of Law 53 of 1882.*)

204). ART. 424. The notification of definitive judgments, whether there be two or more parties, shall be made by an edict posted in the room of the court or Tribunal, when a month shall have elapsed since they were rendered and the parties or any of them should not have appeared to do so personally. The edict shall contain the resolutive portion of the decision, and shall be signed by the Justices or the Judge who rendered it, and shall remain posted for five days.

If the decision should have been rendered in the second instance, the edict shall be posted five days after the publication of such judgment.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

205). ART. 35 of Law 105 of 1890. The notification of judgments in all kinds of suits, provided they be definitive, whether there be two or more parties, shall be made by an edict posted in the room of the court or Tribunal, when thirty days shall have elapsed since they were rendered, without the parties or any of them not having appeared in order that notice might be served in person.

The edict shall contain the name of the Court or Tribunal, the date and the resolutive portion of the judgment; it shall be signed by the Judge or by the Justices who may have rendered it, and shall remain posted for five days.

If the judgment should have been rendered in the second instance the edict shall be posted five days after the publication of such judgment.

706.

206). ART. 425. If the defendant should be absent, the notification of the reference of the complaint shall be served upon him by letters requisitorial or by a writ of summons, which must be accompanied by the complaint, by the documents which may have been presented therewith and by the order directing the reference, the originals of all of which must be sent. But if there should be any risk of the loss or miscarriage

of the documents attached to the complaint, copies thereof may be transmitted on the petition of the complainant.

195 subdivision 1, 207 to 210.

Amended by the following article:

207). ART. 40 of Law 105 of 1890. In the case of article 425\* of the Judicial Code, there shall be attached to the requisition or writ of summons copies of the complaint, of the documents which may have been presented therewith and of the order directing the reference, if the complainant should so request.

208). ART. 426. In the case of the preceding article, the Judge shall set a time, taking the distance into consideration, for the defendant to enter an appearance in the action; and upon the expiration of this period, the term within which to make answer to the complaint shall begin to run against the defendant, if the communication having been returned the respective return of the service of notice shall appear therein.

1601.

209). ART. 427. If the defendant should reside abroad, the letters rogatory or communication shall be addressed, through the Executive Federal Power, to a Diplomatic or Consular Agent of Colombia or of a friendly nation, the respective provisions of International Law being observed. In the case of this article, the Judge shall extend the period of the summons such time as he may consider necessary, taking into consideration the distance and the greater or less facility of communication.

1601.

Supplemented by the following article:

210). ART. 34 of Law 105 of 1890. The formalities referred to in article 427† of the Judicial Code for service of notice of the complaint, and those which are to be observed in accordance with the said Code for the performance of any other proceeding in a foreign country, shall not be indispensable with regard to the nations with which a different method of procedure shall have been agreed upon by special treaties.

211). ART. 428. When an executory or ordinary action shall be directed against the property or person of one or more individuals who shall not have been found, after the Judge shall have assured himself of his competency to take cognizance of the matter, he shall cite the defendants

\* Ordinal 206.

† Ordinal 209.



by means of an edict which shall remain posted in the public place in the court or Tribunal for a period of thirty days.

If the defendant should not be a resident of the place where the action is brought, and his domicile should be known, another edict shall be ordered posted there for the same period, and upon the expiration thereof, the Judge commissioned shall return the edict with a memorandum of the posting and removal thereof.

In addition, immediately after the first edict shall have been posted, it shall be published in a newspaper, if there be any, for three times at least, and if notwithstanding this call the defendants should not appear, the Judge shall appoint an administrator (*defensor*) for their property, with whom the suit will be prosecuted.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the three which follow:

212). ART. 25 of Law 105 of 1890. When any action whatsoever is directed against the property or the person of one or more persons who shall not have been found, or who should be uncertain, after the Judge shall have assured himself of his competency to take cognizance of the matter, he shall summon the defendants by means of an edict which shall be posted in a public place of the Court or Tribunal, for a term of thirty days.

215.

213). ART. 26 of Law 105 of 1890. If the defendant or defendants should not be residents of the place where the suit is instituted, and their domicile were known, another edict shall be ordered posted there for the same term, and upon the expiration thereof, the Judge commissioned shall return the edict with a note of its posting and removal.

215.

214). ART. 27 of Law 105 of 1890. As soon as the edict referred to in article 25\* shall have been posted, a copy thereof shall be published in the official newspaper of the Department, for three times at least; and if notwithstanding this call the defendants should not enter an appearance, upon the expiration of thirty days the Judge shall appoint for them counsel, with whom the suit shall be prosecuted.

220.

Supplemented by the following article:

215). ART. 28 of Law 105 of 1890. The terms of the preceding article and of articles 25 and 26† of this Law shall be observed whenever,

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\* Ordinal 212.

† Ordinals 212 and 213.

even though no action shall as yet have been instituted, it is necessary to serve a personal notification for legal purposes. The notification shall be served upon the counsel appointed.

220.

216). ART. 429. When there are a number of persons interested in an affair and they should be cited personally, or by means of edicts, in accordance with the provisions of the preceding articles, in the event of their whereabouts being unknown, if they should not all of them appear, the suit shall be prosecuted with those entering an appearance, and if none should appear, counsel shall be appointed for all.

In all the cases mentioned, the judgment rendered shall comprise and consequently prejudice all those who may have been cited, as if they had been present.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

217). ART. 29 of Law 105 of 1890. When there are a number of persons interested in an affair and they should be notified personally, or summoned by edicts, in accordance with the provisions of the preceding articles, if all of them should not appear the action shall be prosecuted with those who do appear, and if none appear, counsel shall be appointed for all.

In the cases mentioned in this article, the judgment rendered shall include and consequently prejudice all those who may have been notified or summoned, as if they had been present.

220.

218). ART. 430. In the case of the preceding article, if any of the persons interested should enter an appearance during the suit, he shall be admitted as a party at the stage at which it may be, without altering its course; and, therefore, what may have taken place up to that time shall prejudice or benefit him.

219). ART. 431. The defenders who may be appointed in the cases mentioned, are liable to the persons they represent, under the same terms as attorneys in fact. The person defended is obliged to pay, upon the appraisal by experts, the value of the defense, and also the costs which the plaintiff may furnish for the continuation of the suit.

The plaintiff is obliged to furnish the defender what may be necessary for said expenses, and if he should excuse himself from so doing, the course of the suit shall be stayed.

214, 215, 217.

220). ART. 432. Those who cannot appear in court for themselves cannot be appointed defenders of absentees.

61 *et seq.*

#### SIXTH AMENDMENT.

(*Of Law 46 of 1876.*)

221). ART. 433. In suits in which there are more than three litigants, all notifications, with the exception of that of the reference of the complaint, shall be made by edicts. For each notification, the edict shall be posted during the working hours of a natural day; but if the notification were of a final judgment, the term of the edict shall be five days, and it shall be signed by the Justices or by the Judge who issued the order of which notice is served, in accordance with the provisions of art. 424 of the Judicial Code.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

222). ART. 36 of Law 105 of 1890. In suits in which there are more than three litigants, all notifications, with the exception of that of the reference of the complaint, shall be made by edict, and it shall not be necessary that the day elapse referred to in article 31 of this Law in order to make them in the form indicated. For each notification, the edict shall be posted the working hours of a natural day; but if the notice were of a final judgment, the term of the edict shall be five days, and it must be signed respectively, by the Justices or the Judge who may have issued it, in accordance with the provisions of the preceding article.

If the order of which notice is to be served directs that one of the parties be cited for the purpose of answering interrogatories, and the latter shall not personally have entered an appearance in the action, but shall have done so through an attorney in fact, such notification must also be served personally.

194, 195, subdivision 2, 205, 199.

The article which follows is additional:

223). ART. 39 of Law 105 of 1890. When a suit shall have been suspended or stayed for more than six months, the first decisions rendered therein shall be served personally upon the litigants, whatever be their number.

224). ART. 434. In the notifications, the parties shall not be permitted to make arguments or advance reasons; all that can take place therein is the consent or the contradiction in the case of an impediment on the part of the Judge or Justice, the interposition of an appeal, the appoint-

ment of a depositary, expert, etc., or another act of the nature of those expressed.

225). ART. 435. In every case in which the party shall excuse (avoid) the notification manifestly, or should not wish or not know how to sign, the Secretary shall be accompanied by a witness, who shall sign the return, a note to this effect being made in the record, with a statement of the date, which shall be considered as a notification for all legal purposes.

198.

226). ART. 436. Whenever a person shall appear in a suit in representation of a number, he shall be considered as a single individual for the purposes of the notices and other similar proceedings in the suit.

227). ART. 437. The provisions of this Chapter must be understood without prejudice to what may be expressly provided in the special proceedings as to the mode of serving notifications.

196.

228). ART. 438. Notifications which may be made in any other manner than those mentioned in this Code, are null; and the Secretary who may make or tolerate them, shall incur a fine not to exceed fifty pesos, which the Judge or Tribunal of the cause shall impose upon him, upon the mere notice of the notification illegally made, and he shall be liable, furthermore, for the damage which may have been caused through his fault.

Nevertheless, if the person upon whom the notification was to have been served should expressly state in court knowledge of the order, such statement shall, from the time it is made, have the effects of a notification, as if the latter had been legally made; but the Secretary shall not thereby be relieved from the liability established.

Supplemented by the following article:

229). ART. 30 of Law 105 of 1890. If the party to be notified of an order or decision, should express knowledge thereof before the Judge of the cause in writing, said statement shall from said moment produce the effects of a legal notification for the person making it.

The following article is supplemental:

230). ART. 37 of Law 105 of 1890. As a general rule no resolution produces any effects before notice thereof shall have been legally served on the parties.

330.

## CHAPTER VII.

*Interrogatories (Posiciones).*

231). ART. 439. If the defendant should request, before making answer to the complaint, that the complainant answer interrogatories (*absuelva posiciones*), the Judge shall so direct, without thereby interrupting the term for the answer; but he shall order them answered immediately after they shall have been requested. The complainant having been cited in such case, it shall be his duty to proceed to the office of the Judge at the hour which may be set therefor, in order to reply to the interrogatories.

234, 236, 237, 247, 255, 256, 258.

The following article is additional:

232). ART. 27 of Law 100 of 1892. The petition for the admission of interrogatories in the suit is admissible only within the respective terms for the admission of evidence.

Article 439\* of the Judicial Code is thus supplemented.

233). ART. 440. The complainant is forbidden to request the propounding of interrogatories, before issue joined. The following cases are excepted: 1. If the purpose of the interrogatories were to establish the civil capacity of the person to be sued; 2. If the interrogatories relate to the dilatory exceptions pleaded by the defendant; and 3. If the purpose thereof were the verification (acknowledgment) of a signature or document by which the person whom it is intended to sue or who has already been sued may have obligated himself in favor of the complainant.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

234). ART. 41 of Law 105 of 1890. Before the institution of the suit, the presumed complainant may propound interrogatories by articles once only, to the person he is about to sue, upon any questions connected with the matter which is to be the subject of the suit. After the latter shall have been instituted, any of the parties may request that interrogatories be propounded, once during the incidental issue on dilatory exceptions, and another time, in each of the instances of the suit.

231, 236, 237, 247, 255, 256, 258, 392.

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\* Ordinal 231.

## SEVENTH AMENDMENT.

*(Of Law 46 of 1876.)*

235). ART. 441.\* In ordinary actions, after issue joined, both parties have the right to propound interrogatories in writing to the opposite party as to the facts the subject of the evidence, once only in each instance.

The following article is supplemental:

236). ART. 42 of Law 105 of 1890. More than twenty articles cannot be included in one interrogatory.

237). ART. 442. The article must be drafted clearly, each article referring to one fact only, in so far as possible, and being so presented that the party interrogated may respond simply whether what is asked is or is not so.

242, 245 to 248.

238). ART. 443. The party shall be interrogated in person by the Judge of the cause, or by the one to whom this duty may be entrusted, if the party should not reside in the same place, after taking oath to tell the truth. The respective Judge shall set a day and hour for the appearance of the party, upon whom personal notice shall be served.

In the event of a legitimate impediment preventing the appearance of the party, the Judge shall proceed to the place where said person may be detained.

1599.

239). ART. 444. The interrogatory must be presented open or under closed and sealed cover, and in the latter case it cannot be opened until reply is to be made thereto.

If it shall have been presented open, so that the party shall have been able to prepare his answer, the presentation of such answer in writing shall not be permitted.

240, 251.

Amended by the following article:

240). ART. 43 of Law 105 of 1890. When the articles are presented sealed, and are to be propounded without the place where the suit is being prosecuted, which shall always be done when the person interrogated should not be there, the Judge taking cognizance of the cause shall open the package for the sole purpose of qualifying the same, and

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\* Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the second part of ordinal No. 234.

shall then send it sealed to the Judge commissioned. This is not an obstacle to the right of the person propounding the interrogatory from objecting to the resolution of the Judge by which he redrafts one or more of them, an objection which he may make after reply shall have been made thereto and they shall have been referred to him.

252.

241). ART. 445. In every case, each article shall be read separately, the answer being immediately put in writing, and in the absence of any answer, the respective return shall be written. After each answer shall have been written, it shall be read to the person interrogated, and after being approved by him, it can not be changed nor amended.

Supplemented by the following article:

242). ART. 46 of Law 105 of 1890. If upon an article being read to the person interrogated, he should state that he does not understand the question, the Judge shall make the proper explanations. If the articles should comprise two or more facts, which may be separated for the purposes of article 442\* of the Judicial Code, the Judge, on his own motion or on the petition of the deponent, shall make the separation and each partial answer shall be written immediately after the respective part of the article.

243). ART. 446. If among the questions presented under sealed cover there should be any for replying to which the party should state that it is necessary for him to recollect some facts, or examine some memoranda or documents, and should request time in which to do so, the Judge shall grant him such time, if he should deem it reasonably necessary, suspending the proceedings and again sealing the wrapper of the interrogatory.

The next two articles are supplemental:

244). ART. 47 of Law 105 of 1890. When the person interrogated should state that he ignores or does not remember the fact upon which he is questioned, and taking into consideration his age, his state of health, his sex and condition, the fear and degree of intelligence he may show, the time the act occurred, and the intervention he may have had therein, it may be presumed, in the opinion of the Judge, that his answer is a sincere one, he shall in a circumspect manner, make the proper indications to assist the person interrogated to recollect the facts; and he shall even ask him, taking into consideration the importance of the fact in question, if by consulting some memoranda or documents he could recollect the facts, and if the person interrogated should agree thereto, the Judge shall proceed as provided in article 446† of the Judicial Code.

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\* Ordinal 237.

† Ordinal 243.

245). ART. 48 of Law 105 of 1890. In the case of the preceding article, the reasons which the person interrogated may give for not answering the question categorically, shall be made a matter of record, and if they should be sufficient, taking into consideration the circumstances referred to, the Judge shall not make the declaration of confession referred to in article 449\* of the Judicial Code, but if he should note a spirit to evade the question, the provisions of said article shall be strictly observed.

237, 246, 248.

246). ART. 447. The party cited for the purpose of making answer to an interrogatory shall answer by stating whether or not the facts upon which he is questioned are true, provided they be pertinent, taking into consideration the subject of the controversy, and he shall not be permitted to make other explanations or observations than those which may be indispensable to elucidate the said facts.

237, 245.

247). ART. 448. No article referring to impertinent or improper acts shall be admissible, nor shall the person interrogated be permitted to make any improper or libellous (*injuriosa*) answer, which, taking into consideration the nature of the matter, were not indispensable for his defense, in the opinion of the Judge.

248). ART. 449. If the party required to make answer should in an evident manner evade a categorical answer, the Judge shall admonish him once only to make such answer, under the penalty of his being declared to have confessed should he not give it; and if the party should continue contumacious, the Judge shall *eo instanti* declare the party to have confessed the fact which he did not wish to reply.

245, 246.

The following article is supplemental:

249). ART. 49 of Law 105 of 1890. The fictitious or presumed confession arising from the person interrogated stating that he ignores or does not recollect the fact upon which he has been questioned, is not full proof but a more or less strong indication, according to the relation which it may bear to the evidence which the party favored may present; said confession may likewise be invalidated by the evidence on the part of the party prejudiced, and by the explanations which he may give as to the manner in which the acts took place, in the event that such explanation should be reasonable and based upon proved facts.

244, 245.

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\* Ordinal 248.



250). ART. 450. No appeal lies from this resolution; but its effects are limited to the instance in which it may have been rendered, and it may be modified by the superior in the appeal or in any other remedy against the final decision.

251). ART. 451. In replying to the interrogatories, the person interrogated shall not be permitted to seek the counsel of any one, and there shall be present at said act only the Judge, the Secretary and the person interrogated, who shall sign the proceeding.

239, second paragraph.

252). ART. 452. The interrogatories having been answered, they shall be referred, together with the replies, to the person who propounded them, for twenty-four hours, in order that he may make such remarks as he may deem proper in support of his rights.

240, second part.

253). ART. 453. The evidence admissible against confession in general, according to articles 569 and 570\*, may be adduced against a confession resulting from the reply to the interrogatories.

248, 249, 250. Law 169 of 1896, art. 34.

254). ART. 454. If during the course of the suit it should be proved in an evident manner that one of the parties, in replying to the interrogatories, knowingly perjured himself, upon a substantial matter in the suit, in addition to the penalties which he may incur owing to the perjury, and which shall be imposed upon him after the proper criminal proceedings, in the civil suit in which he may have committed the perjury, he shall be sentenced, if he were the plaintiff, to the loss of the suit, and if the defendant, to fulfill the obligation the subject of the suit.

255). ART. 455. Answer to the interrogatories may be made through an attorney in fact sufficiently instructed, unless a request be made that the party answer thereto personally. What the attorney may do in such case, shall be binding upon the principal in every respect, without prejudice to the personal liability of the former if he shall have knowingly committed perjury, or should not have observed the instructions given him by his principal.

256). ART. 456. The attorney in fact is not obliged to answer interrogatories, if not authorized therefor, and if the party whom he represents is in the place of the suit; but he must testify as a witness if the opposite party should so request.

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\* Ordinals 400 and 401

257). ART. 457.\* The representatives of the Nation, in a suit, are always considered as sufficiently instructed and authorized to make answer to interrogatories.

258). ART. 458. The party is not obliged to make answer to interrogatories which do not relate to personal acts of the party interrogated.

Knowledge of an act, even though performed by another, is considered as a personal one of the party interrogated.

259). ART. 459. The party who, having been cited to reply to interrogatories, should not appear at the time and place designated, if not prevented from so doing by some just and legal impediment, duly proved; the party who, entering an appearance, should refuse to make answer to some of the questions put, if pertinent, and the party who, before being cited should absent or conceal himself, or should perform any other act of this character, with the manifest end in view of evading a reply to the interrogatories, shall be declared to have confessed.

The following are just causes for non-appearance at the hour and place designated: 1. The grave illness of the party interrogated or of any of the persons of the family with whom he may be living; 2. The death of any of the said persons, having taken place within the nine days next preceding that fixed for replying to the interrogatories; and 3. *Force majeure*.

262, 327, second par.

260). ART. 460. Two witnesses, or a trustworthy document, are sufficient to prove an excuse based upon any of the reasons mentioned in the preceding article; but the proof must be submitted together with the excuse, not later than the hour when the person excusing himself should have appeared. It is necessary to prove the impossibility to present the excuse and proof within the time fixed, in order that it may be admissible later, in the proceedings which may be instituted in order to secure a declaration of confession.

262.

The two articles which follow are supplemental:

261). ART. 44 of Law 105 of 1890. Notwithstanding the provisions of subdivision 2, of article 32 of this Law, if for the personal notification referred to, the person of whom reply to interrogatories is sought, should not be found, the following proceedings shall be had:

1. The Secretary shall state what steps he may have taken for the purpose of serving the personal notification and the reason for the failure to make such service.

2. There shall be posted on the dwelling house of said person, if it be known; upon that fixed for the service of notifications, if any shall have

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\* Impliedly repealed by article 9 of Law 169 of 1896.

been fixed, and upon those of two or more of his relatives, friends or connections, notices stating that he has been ordered summoned for the purpose of answering interrogatories in a certain suit.

3. An edict shall be published in the official newspaper of the Department summoning said person to appear in the office to perform said act within thirty days, counted from the date of the publication of the edict; and

4. All that has been stated having been done, with regard to which the Secretary shall make a record in the process, and the thirty days referred to in the preceding paragraph having expired, notice of the decree shall be considered as served, and the Judge shall so declare by means of a resolution, in order to avoid doubts and difficulties.

203.

262). ART. 45 of Law 105 of 1890. In the cases in which the declaration of confession shall be based upon a simple presumption of citation and notification, established by the law, and not upon a personal notification or citation, the respective party may appear for the purpose of making answer to the interrogatory within twenty days following the declaration of confession. In such case, the proceeding shall be had, and the declaration of confession shall not produce any effect whatsoever.

The envelope containing the interrogatories shall be kept sealed, and the Judge shall abstain from rendering judgment until the twenty days referred to in the preceding paragraph shall have elapsed.

259. 260.

## CHAPTER VIII.

### *Exceptions.*

263). ART. 461. Every person who shall have been cited to appear in court by virtue of a complaint filed against him, may use in his defense the legal exceptions which he may believe to favor him.

279, 280, 265, 288, 289.

264). ART. 462. Exceptions are divided into *dilatory*, which relate to the procedure in order to suspend or improve it; and into *peremptory*, which are opposed to the substance of the action.

265, 284, 285, 288, second par.

265). ART. 463. The defendant, within the term allowed him to make answer to the complaint, may interpose the following dilatory exceptions: 1. Declination of the jurisdiction; 2. The illegality of the representation; 3. That of improper complaint (*inepta demanda*);

4. That of *lis pendens*; 5. That of time to deliberate; and 6. That whose purpose is to establish the identity of the person of the plaintiff.

847.

266). ART. 464. The exception declining the jurisdiction refers to a case in which the Judge lacks jurisdiction, or is not competent to take cognizance of the suit, according to the provisions of Title VI, Book First.\*

267). ART. 465. The exception to the illegality of representation, may be pleaded in the following cases: 1. When the plaintiff should not be qualified to appear in court, according to the provisions contained in the chapter "Complainant and Defendant;" 2. With regard to the attorney in fact, executor, guardian, receiver or syndic, treasurer, *fiscal*, and other persons who act in the names of others, to prove their representation; 3. *To present the proof of the acquisition of the thing or right claimed, when the reason for which it is claimed or sued for is that of having acquired it by transfer from another person;* and 4. In order that the identity of the person establishing the suit be proved.

The 3d case in this article was expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

268). ART. 53 of Law 105 of 1890. An exception to the illegality of representation may be pleaded when the plaintiff shall have failed to present the proof of the acquisition of the things or rights which he claims in the event that, in the opinion of the defendant, such things or rights belong to a determinate person, not the plaintiff.

Both this article and ordinal article 267, whose third subdivision was subrogated hereby, were repealed by article 87 of Law 100 of 1892, and subrogated by the following:

269). ART. 25 of Law 100 of 1892. The exception to the illegality of representation may be pleaded in the following cases:

1. When the plaintiff should not be capable of appearing in court, according to the provisions contained in the Chapter entitled "Complainant and Defendant."

2. With regard to the attorney in fact, executor, guardian, receiver and other persons who act in the names of others, in order that they may establish their representation.

3. For the purpose of establishing the identity of the person making the complaint.†

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\* The Book first cited in this article was repealed by article 230 of the Code of Organization, present First Book. Title VI referred to in this article corresponds to Title X of the new First Book.

† In repealing the two preceding articles and subrogating them hereby, it was not noticed that case 3 of the latter constitutes the sixth exception of ordinal article 265, referred to in ordinal article 274.

270). ART. 466. The representation need not be established when the suit is brought in one's own cause: thus, for example, if a person claim an inheritance in the character of a child of the deceased, the defendant cannot excuse himself from making answer to the complaint by reason of the plaintiff not establishing his quality of son, as this and similar exceptions are peremptory, and must be presented and established at another stage of the suit.

271). ART. 467. The exception of an improper complaint lies: 1. When that interposed is not in accordance with the provisions of Chapter 2 of this Title; 2. When the complaint is made against a person other than that obliged to answer for the thing or act the subject-matter of the suit; and 3. When the complaint is given a course other than that pertaining thereto.

272). ART. 468. The exception of *lis pendens* is pleaded in the event that a suit is being prosecuted before another Judge upon the same right of action, in order that the Judge who first took cognizance thereof may continue doing so.

273). ART. 469. The exception of time to deliberate lies when the heir the executor, or other person who may have to be responsible by administration, shall not as yet have accepted the inheritance or administration, by reason of the legal period for deliberating not having elapsed.

274). ART. 470. The sixth exception of those mentioned in article 463,\* lies when the complainant is objected to as not being the person he supposes himself to be.

275). ART. 471. A dilatory exception having been taken in due time, the Judge shall refer it to the plaintiff, who shall make answer within forty-eight hours. The reference having been replied to, a decision shall be rendered on the exception taken within forty-eight hours, if the question should be one of pure law. But if it should be necessary to prove facts, evidence shall be taken thereon for a term of six common days which cannot be extended, upon the expiration of which the Judge shall render his decision within three days, receiving, if produced in time, the written arguments which the parties may wish to present.

283.

276). ART. 472. The ruling upon the exceptions shall include the taxation of costs against the party defeated, if his presumption (temerity) were manifest.

731, 743, 736.

277). ART. 473. In the ruling declaring the exceptions to be not proved, the defendant shall be ordered to make answer within twenty-four hours.

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\* Ordinal 265.

278). ART. 474. If there be two or more defendants, the procedure for deciding with regard to the exceptions pleaded shall not begin until the term of the last reference of the complaint shall have expired.

279). ART. 475. The defendant must plead all the exceptions to which he may believe himself entitled at one time, as they are not admissible one after the other.

The following article is supplemental:

280). ART. 50 of Law 105 of 1890. The right to propose dilatory exceptions can be used once only in the suit.

281). ART. 476. When the dilatory exception proposed shall be declared proved, the defendant is not obliged to make answer to the complaint as long as the cause for the exception shall exist.

282). ART. 477. The rulings by Judges of First Instance upon dilatory exceptions may be appealed from to the Federal Supreme Court.

783 to 787.

283). ART. 478. Every dilatory exception shall be heard and decided in a separate record.

275.

284). ART. 479. The most ordinary peremptory exceptions are the following: 1. Payment already made of the debt claimed; 2. Remission or condonation of the debt; 3. Set off of the debt claimed, by another equal, greater or less owed by the plaintiff to the defendant; 4. The novation of the obligation claimed; 5. Fraud or fear exercised in the contract; 6. Falsity of the obligation claimed; 7. Nullity of the said obligation; 8. Transaction or private arrangement between the creditor and the debtor; 9. *Res judicata*; 10. An agreement not to demand; 11. Order or discussion (*excusión*), that is the right to oblige the plaintiff to collect the debt, before doing so of the defendant, of another person first or principally obligated, as in the case of the surety being sued before the principal debtor, when the security is not solidary; 12. That of petition before the time due or in an improper manner; 13. That the obligation sued for is a conditional one, and that the condition has not been performed; 14. Prescription or loss of the right sought to be enforced, by the lapse of time; and 15. A fortuitous event or unexpected and invincible accident which has prevented the fulfillment of the obligation.\*

264, 285.

The following article is supplemental:

285). ART. 52 of Law 105 of 1890. Any act by virtue of which the

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\* See the titles relating to these exceptions in Book Fourth of the Civil Code.

laws ignore the existence of the obligation or declare it extinguished, if it ever existed, constitutes a peremptory exception.

264.

286). ART. 480. The exception of set off, shall be admissible only in the event that the judicial proceedings relating to each right of action should be of a similar character, that is, both ordinary, or both special.

287). ART. 481. An exception pleading a fortuitous event shall lie only in case the obligation consist of the delivery of a certain and determinate thing, under a contract or quasi-contract, for the reason that a generic obligation, or that of delivering a generic thing or amount, is not extinguished by fortuitous events. When said exception is admissible, in accordance with this article, he who pleads it must prove it by establishing that the loss or destruction of the thing is due to an unknown or unforeseen cause, which it was impossible to avoid.

1565, 1566, 1567 of the Civil Code.

288). ART. 482. The peremptory exceptions must be proposed in the answer to the complaint, or during the first half of the ordinary probatory term; they are inadmissible outside of this time.

Nevertheless, an exception of *res judicata* may be proposed also as a dilatory exception, before answer to the complaint.

284, 285, 289, 265, 291, 864, 1596 subdivision 3.

The following article is amendatory:

289). ART. 51 of Law 105 of 1890. When the Judge shall find that the facts constituting a peremptory exception are established, even though such exception should not have been proposed nor pleaded, he must admit it in the judgment and decide the suit in accordance with the exception admitted; nevertheless, with regard to an exception pleading prescription, it is necessary that it be pleaded, which may be done at any stage of the cause.

285, 288. 2513 of the Civil Code.

290). ART. 483. Peremptory exceptions are not the subject matter of articles requiring decision before the proceedings are continued; they are decided in the final judgment.

288, 289.

291). ART. 484. The Attorney-General of the Nation may propose peremptory exceptions at second instance in civil matters, when they should not have been proposed at first instance by the official representing the Nation in said matter. He may do this until the time of

citation for judgment, and if the opposition of peremptory exceptions should lie from the time of the termination of the probatory term, until citation for judgment, the Federal Supreme Court shall *ex proprio motu* return the matter to its state at the time evidence thereon was first taken, without such action invalidating what may have taken place up to that time.

If no evidence shall have been taken in the second instance, the Court shall allow the common term of ten days for the presentation of evidence in the event that the Attorney-General should propose peremptory exceptions.

The right to plead exceptions, granted by this article, may be made use of once only in each suit, both by the Attorney-General of the Nation, as by the parties opposing the Fisc; but this right shall not be granted the latter at second instance, unless the Attorney-General shall have made use thereof.

1596, 3d subdivision.

#### CHAPTER IX.

##### *Judicial Proceedings (Actuación).*

292). ART. 485. The proceedings in every national suit shall always be kept in writing, on ordinary paper.

293). ART. 486. The paper for the proceeding shall be advanced by the plaintiff in each instance. If he should fail to furnish it not later than the day following that on which he may be asked therefor, the respective Secretary shall furnish it, if the defendant should so request.

294). ART. 487. If for the second time, in the instance, the plaintiff should fail to furnish the necessary paper in due time, and the defendant should not take any action, the course of the proceedings shall be stayed, the Secretary making a memorandum stating what has taken place.

295). ART. 488. If in the case of the preceding article the defendant should furnish the necessary paper for the plaintiff the matter shall continue its legal course.

296). ART. 489. If the defendant should complain of the omission on the part of the plaintiff, without offering the paper necessary, the Judge or Tribunal of the cause shall allow the plaintiff a term of twenty-four hours to appear with the paper necessary, warning him that if he fails to do so, a declaration will be made that the plaintiff has abandoned the instance, which shall be made in such case, on the motion of the defendant and after a report of the respective Secretary.

297). ART. 490. If the declaration referred to in the preceding article should issue against the complainant, he cannot institute the same suit if the declaration should be made in the first instance. If made in the second, whoever be the appellant therein, the effect of a declaration of



abandonment shall be to make the decision appealed from final, to the prejudice of the appellant, who shall, furthermore, be adjudged to pay the costs of the instance.

298). ART. 491. When the Secretary or the opponent should furnish the paper necessary for the plaintiff, the latter shall reimburse the value thereof, for which purpose a memorandum shall be made on each sheet of the party furnishing it.

The seven preceding articles have been expressly repealed by article 338 of Law 105 of 1890, and subrogated by ordinal articles 299 to 304 :

299). ART. 56 of Law 105 of 1890. In suits, the paper prescribed by the organic law on stamped paper shall be used, reserving the provisions for special cases.

300). ART. 57 of Law 105 of 1890. The paper necessary to resolve the petitions of the parties and for the consequent edicts, communications, acts, etc., shall be furnished by the party making the petitions; but the paper for the continuation of the suit proper and the decision, shall be furnished by the plaintiff in the proceedings.

303, 304, 306.

301). ART. 58 of Law 105 of 1890. Each party shall always keep in the possession of the respective Secretary, at least one sheet of stamped paper for the proceedings in each suit. The party failing to comply with this duty, shall be called upon by the Secretary to furnish it, by virtue of a previous verbal request made by the opposing party.

The Secretary shall make a record, upon ordinary paper in the absence of stamped paper, of his request, stating the date.

302). ART. 59 of Law 105 of 1890. If the party called upon should not furnish, within three days after the request to do so, the paper referred to in the preceding article, or the paper requested for the proceeding or the final judgment, he shall incur a fine of five pesos. In the event of a second failure to do so, the fine shall be equal to the last one imposed, with a surcharge, each time, of five pesos.

It is the obligation of the Judge or Magistrate to make *ex proprio motu* all the orders necessary for the fulfillment of the provisions of article 218 of the Code of Judicial Organization; but the arrest referred to in said article shall not take place if at the time of making it the fine is paid.

Expressly repealed by article 87 of Law 100 of 1890, and subrogated by the following:

303). ART. 30 of Law 100 of 1892. If the party called upon should not furnish, within three days after the request shall have been made, the paper necessary for the proceeding or for the judgment, he shall incur a fine of five pesos; if notwithstanding the imposition of the fine

he should fail to furnish the paper, he shall again be requisitioned to do so by means of an order, made at the request of the opposite party; and if thirty days should elapse without his doing so, it shall be presumed that he abandons the instance or the appeal, and a declaration to that effect shall issue.

This provision does not comprise the suits referred to in article 815\* of the Judicial Code.

683.

304). ART. 60 of Law 105 of 1890. The party opposing the party who fails to furnish the paper in due time, may furnish it, having the right in the taxation of costs, to a credit or deduction—according as to whether he may be entitled thereto or he should be adjudged to pay them—in addition to the value of the paper furnished, of a surcharge of fifty per cent.

305). ART. 492. If the plaintiff or complainant should be the Fisc, or the Nation, the paper to be furnished by such party for the proceeding shall be taken by the Secretary from that provided for the use of the respective Superior or Inferior Court.

306). ART. 493. At least two sheets of paper, furnished in advance by the party who interposed the appeal of which a tribunal or court is to take cognizance, shall be attached to every record transmitted to the same. This shall not be necessary if the appellant should be the Fisc.

307). ART. 494. The Judges and Justices shall, in the dispatch of civil affairs, give preference to the most important and urgent ones, without this authorizing them to delay the dispatch of any other matter for a term greater than that permitted by the laws.

308). ART. 495. With the exception of the cases expressly excepted in this Code, the Judges and Justices shall advance the suits themselves and are liable for any delay or stay.

309). ART. 496. The Secretaries shall make a note upon the records, of the cause of any delay, and should they fail to do so, they shall incur a fine of ten to fifty pesos, which shall be imposed upon them by the same Judge of the instance or by the Superior.

310). ART. 497. The Secretaries shall authorize with their signatures all judicial resolutions, placing under the signature the name of the office, and stating whether they are the regular incumbents, or are acting temporarily or accidentally.

197.

311). ART. 498. The Secretaries are under the special obligation of showing the parties or any other person the papers in a pending case

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\* Ordinal No. 675.

and those filed, excepting only such proceedings which, for the honor of some family, are being conducted secretly; as such proceedings are private in so far as persons not parties to the suit are concerned.

312). ART. 499.\* The Secretary must always certify, on the verbal petition of the persons interested, and by order of the respective Judge or Justice, to any acts connected with the matters in which he takes part, and furnish an authorized copy, at the cost of the person interested, of any document in his office, when a request shall be made and an order issued by the Judge or Tribunal. Such matters in which publicity is inadmissible are excepted.

313). ART. 500. The Secretaries receive for these certificates and copies the fees mentioned in Title VIII, Book I.†

314.) ART. 501. Outside of the cases expressly determined by law, no record or original document shall go out of the Office of the Secretary, and the Secretary is responsible for any loss which may occur.

8, 340, 564, 567.

#### NINTH AMENDMENT.

(Of Law 53 of 1882.)

315). ART. 502. The Judges of first instance and the Federal Supreme Court shall return to the persons interested, without the necessity of retaining a copy, the documents and evidence comprised in the records of suits for the recovery of pensions, instituted under Law 50 of 1879, and which remained pending as a consequence of the repeal of said Law. The persons interested may proceed to the proper place for the purpose of enforcing their rights, and their evidence shall be weighed in accordance with the general rules and the special ones contained in Law 14 of the present year in its 9th and following articles.‡

316). ART. 503. Each matter shall be conducted in a separate record, that is to say, different matters shall not be consolidated, but neither shall the continency of each cause be divided.

317). ART. 504. Whenever a term of hours shall be set by the law or the Judge for the execution of a proceeding, the hour of its execution shall be expressed.

318). ART. 505. A separate record shall be made of each incidental issue arising during the course of the action, which, after a decision on the issue, shall be added to the principal record of the case.

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\* Amended by article 28 of Law 100 of 1892. This article is in contradiction to the present one in so far as the certifications of Secretaries are concerned.

† Article 230 of the Code of Organization expressly repealed said Book I; but article 18 of Law 72 of 1890, re-established in an express manner the said Title VIII.

‡ The year referred to in this article is 1882.

At the beginning of the hearing on any incidental issue, the Judge or Justice shall direct the formation of a separate record.

583 *et seq.*

The five articles that follow are supplemental:

319). ART. 54 of Law 105 of 1890. When the plaintiff shall abandon for one year during the first instance the suit which he may have instituted, the instance shall be considered as lapsed and the record of the case shall be filed by order of the Judge or Tribunal taking cognizance of the matter; an order which shall be made *ex proprio motu* upon a report from the Secretary, and which shall be drafted on ordinary paper, in the absence of stamped paper. It shall be understood that there has been abandonment when the plaintiff shall not have taken any action in writing necessary for the continuation of the suit, for one year.

The ruling containing the order referred to which shall be made known by edict, having become final, any attachment which may have been levied shall be raised and the records which may have been made by reason of the suit or the attachment in the registration offices shall be cancelled by mandate of the Judge.

The lapse of the instance does not entail that of the action which may still exist; but the same action cannot again be instituted for two years from the date of the decree by which the lapse was declared. The term of the prescription of the action shall not be considered as interrupted by the complaint which was the cause of the instance which has lapsed.

If the circumstances mentioned in the first paragraph of this article should occur a second time, between the same parties and for the same action, the action shall be declared to be extinguished, which declaration shall be made in accordance with the provisions contained in the preceding paragraphs.

The provisions of this article shall not apply in suits in which the complainant is the Nation, a Department, a Municipality or a public establishment of education or beneficence.

308, 320, 683, 740.

Amended by the following article:

320). ART. 29 of Law 100 of 1892. The lapse of the instance, imposed as a penalty upon the plaintiff abandoning the suit, in the terms of article 54\* of Law 105 of 1890, shall not apply to proceedings on successions and the partition of common property, and in general, to proceedings involving mere voluntary jurisdiction, nor to executory actions. With regard to the later, the provision is applicable after property shall have been attached.

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\* Ordinal 319.

321). ART. 55 of Law 105 of 1890. When the consent of any person shall be required for any judicial effect, it must be expressed in writing, and such document must be presented in person to the Secretary of the Judge taking cognizance of the affair, of which a record shall be made.

In such case, and in all those in which by a provision of the law a document must be presented personally, if the person required to make such presentation should be absent from the place where it is to be made, he shall address the document to the Judge taking cognizance of the action, causing it to be authenticated by the Judge of his residence, as provided for powers of attorney by memorial in article 329,\* 3d case, of the Judicial Code. The same method shall be observed for the presentation of any document or memorial when the party interested should be absent from the place where the proceedings are being held.

322, 335.

322.) ART. 61 of Law 105 of 1890. The parties may request, by common consent and as often as they may choose, the suspension of the proceedings for a certain number of days. Such written petition must be presented personally to the Judge or Justice before the Secretary, of which act a record shall be made which shall be signed by the Judge or Justice before the Secretary and the parties.

323, 336, 321, 335.

323). ART. 62 of Law 105 of 1890. What is provided in this article is without prejudice to the rights of those persons who in accordance with the laws have or may have an interest in the suit, or who may be prejudiced by the suspension thereof, which suspension cannot take place without the consent of said persons.

## CHAPTER X.

### *Periods of time.*

324). ART. 506. Legal periods of time or terms are those designated in this Code for judicial affairs. The Judge shall fix the term in the cases in which the law shall not have done so, making an endeavor always to have it as short as possible, but without prejudice to the defense of the parties.

325). ART. 507. Every judicial order or proceeding must be performed within the term designated. The terms begin to run from the date of the notification to the parties, if both are interested in the provision of the

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\* Ordinal 95.

Judge, without prejudice to each party availing himself of the rights corresponding to him, upon being notified, provided that the opposing party should not be prejudiced by reason of ignorance of the order, and reserving special provisions.

339, 328, 375.

326). ART. 508. Legal terms run by operation of law, without any necessity of the order stating their duration, and they are suspended or do not run: 1. On holidays or days of vacation; 2. During a legal incidental issue, when the law shall have so prescribed; 3. By reason of a legitimate impediment on the part of the Judge; and 4. By reason of a legitimate impediment which may have occurred to one of the parties to the action..

Such impediments are: 1. An illness classified as grave; 2. The death of any of the persons of the family of which the party or the Judge may be a member, and with which he may be living; and 3. Force or violence.

The Judge shall raise the suspension due to an impediment of one of the parties, combining prudence with the interests of the other party.

In the event of suspension by reason of an impediment on the part of the Judge, it cannot be extended beyond the time necessary for the respective substitute to take charge.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

327). ART. 64 of Law 105 of 1890. Legal terms run by operation of law, without any necessity of the order stating the duration thereof, and they are suspended or do not run: 1. On holidays or days of vacation; 2. During some legal incidental issue, when the law shall have so prescribed; 3. By reason of any accident which may cause the suspension of public business; 4. By reason of a legitimate impediment on the part of the Judge; and 5. By reason of a legitimate impediment which may have occurred to one of the parties to the action.

Such impediments are: 1. An illness classified as grave; 2. The death of any of the persons of the family of which the party or the Judge may be a member, and with which he may be living; and 3. Force or violence.

The Judge shall raise the suspension due to an impediment in one of the parties, combining prudence with the interests of the other party.

In the event of suspension by reason of an impediment on the part of the Judge, it must not extend beyond the time necessary for the respective substitute to take charge.

648, 652.

328). ART. 509. Terms for the presentation of evidence are common, and run from the time all the parties are notified of the order granting one of said terms.

337, 375.

329). ART. 510. In the event of the suspension of any term, in accordance with article 508,\* the Secretary shall embody in the record a statement of the date upon which the suspension may have begun, and the day upon which it may cease.

The following article is supplemental:

330). ART. 65 of Law 105 of 1890. Whenever any term whatsoever must be suspended by a judicial resolution, the suspension shall begin from the hour when said resolution is rendered.

337.

331). ART. 511. When, a term having expired, the parties should not have made use of their rights, the course of the action continues. Any damage for an omission is chargeable to the person who incurred it, reserving the right to recover damages which the law grants to the party injured, against his attorney in fact or representative who is negligent or guilty of the omission.

332). ART. 512. As a general rule, and reserving the special and express provisions of this Code, the Judges shall render their judgments and decisions within the following terms and not later: Within ten days, if the decision were a definitive one; within five, if it were an interlocutory one, with the force of a definitive decision; within three, if it were any other interlocutory decision; and within twenty-four hours if the order be one of mere practice.

333, 334.

The two articles which follow are additional and amendatory:

333). ART. 63 of Law 105 of 1890. All the Judges and Justices of the District courts and of the Supreme Court, are granted for the rendition of judgments and decisions, a term double that fixed for each case in the Judicial Code.

A decision of classification (*graduación*) in insolvency proceedings is excepted, which shall be rendered within thirty days.

332, 334.

334.) ART. 22 of Law 100 of 1892. The Justices and Judges shall have for the purpose of rendering judgment, in addition to the term fixed,

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\* Ordinal 326.

one day for every fifty sheets, when the record shall consist of more than one hundred.

This provision is extended to fiscales.

343, 352, 1596 subdivision 6.

335). ART. 513. Any term, formality or guarantee which the law grants in the sequence of the action, may be waived by the party who may be favored by the concession, provided that he do so in writing or clearly stating the term, the formality or the guarantee waived. Said instrument shall be presented in person by the party or parties making the waiver, to the respective Secretary, who shall affix a note at the foot stating that it was presented personally by the parties making the waiver; said note shall be subscribed by the latter and by the Secretary. The omission of the formalities thus waived does not invalidate the action.

336, 321, 322, 323.

336). ART. 514. The terms which the parties may by mutual consent have agreed to, shall be judicially observed.

335.

337). ART. 515. Terms of hours shall begin to run from that following the hour when the respective notification may be made, and terms of days, from the day following that upon which the notification may have been made.

328, 330.

338). ART. 66 of Law 105 of 1890. By an hour is understood the lapse of sixty minutes. Whenever an hour shall be fixed for the performance of any act or proceeding, the precise moment of the beginning of the hour shall be stated in the respective record.

1600. 67, 68 and 70 of the Civil Code.

339). ART. 15 of Law 100 of 1892. Whenever an hour shall be fixed for the holding of some proceeding, the actual time for the performance thereof shall not be considered as having expired until the moment that the following hour begins; and it shall be understood that said hour begins in accordance with custom, from the time that the clock, set at the meridian shall announce it.



## CHAPTER XI.

*Delivery of the records and remedies against those who do not return them.*

340). ART. 516. In order to plead and make answer to the references made to them, the parties may remove the records from the office of the Secretary, upon giving the proper receipt, which they shall sign together with a surety of responsibility, in the judgment of the Secretary.

314.

341). ART. 517. The records shall be delivered and returned with a detailed statement of the number of pamphlets and sheets which they may contain, and of the condition of both.

342). ART. 518. The party delaying the return of a record (*expediente*), even though it be only one day beyond the term granted, loses the right to the removal thereof again, and he can be permitted to examine it in the office of the Secretary only.

The Secretaries do not require a judicial mandate for the purpose of executing this provision; and each time they should fail to do so they shall incur a fine of four pesos, which shall be imposed upon them by the Judge or Tribunal taking cognizance of the cause simply with the record before him.

348, 353.

343). ART. 519. When records consisting of more than two hundred sheets should be delivered to the parties, they shall be allowed for the return thereof, in addition to the term fixed, one day for each fifty sheets above the two hundred, provided that the total term shall not exceed twelve days.

334.

344). ART. 520. Upon the presentation of a complaint, a true copy thereof shall be made at the cost of the complainant, which copy shall be kept in the archives, under the liability of the Secretary, for the purposes mentioned in the following articles.

846, 345, 346, 353, 103.

345). ART. 521. The party who for any reason whatsoever shall take the record, and upon the expiration of the term for which he could retain the same should have failed to return it on the request of the opposite party, shall be called upon to do so before the expiration of the second day, under the admonition, if he were the complainant, that he will lose the rights or the things claimed; and if he were the defendant, that judg-

ment will be rendered against him in accordance with the complaint; and if upon the expiration of this period the record should not have been returned, the Judge or Tribunal in view of the true copy of the complaint, shall, after citation of the parties and without further proceedings render judgment in accordance with the terms of the admonition.

347, 348, 349, 351.

346). ART. 522. In order that the Federal Supreme Court, in the matters of which it takes cognizance at second instance, may render judgment in the case of the preceding article, it shall request the copy of the complaint of the Judge of first instance, and the latter shall immediately transmit it, with the necessary safeguards.

347). ART. 523. An appeal lies to the Federal Supreme Court from the decision rendered by a national Judge of first instance in the said case.

This appeal shall be decided in view of the proceedings had in accordance with the procedure prescribed for appeals from interlocutory judgments, and its purpose shall be to examine whether the Judge who rendered judgment acted as prescribed in article 521, or whether there has been any circumstance suspending the terms, or another cause making the judgment unjust in whole or in part, by reason of which it may be amended or revoked, but always in the meaning of the following article and of the articles to which the latter refers.\*

348). ART. 524. If by virtue of the admonition referred to in article 521† the record should be returned before the expiration of the second day, the provisions of article 518‡ shall thereafter be observed; but if the two days should pass without the return being made, even though it should be made later, if it be not before the parties are cited for judgment, the party who shall have removed the record shall always have judgment rendered against him, in the terms of the admonition.

349. ART. 525. If there should be a number of defendants or complainants, and one of them only should incur the fault referred to in article 521,§ if said party should be one of the defendants, said party only shall be adjudged in the form expressed, to perform in full the obligation the subject of the suit; and if the party should be among the complainants, he shall be adjudged to lose the rights corresponding to him in proportion, in accordance with the complaint, and to indemnify the damages which his co-complainants may suffer through his fault. This shall be so stated in the admonition.

350). ART. 526. If any of the parties should have judgment rendered

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\* The provisions of this and of the preceding article regarding the Supreme Court, are applicable also to the Superior Courts. (*Angarita.*)

† Ordinal 345.

‡ Ordinal 342.

§ Ordinal 342.

against them in the terms of the preceding articles, he shall have the right to be indemnified for all he may pay, or for the damage he may suffer by the attorney in fact guilty of delay in returning the record.

351). ART. 527. In no case shall the provisions of article 521 apply against the Nation, and the return of the records which the respective Agents of the Department of Public Prosecution may have removed in pursuance of a reference shall be obtained by a means of successive compulsory process consisting of fines which the Federal Supreme Court or the Court or Judge in a proper case, taking cognizance of the cause, shall declare them to have incurred, which fines shall never exceed, each time, twenty-five pesos.

352.

352). The Federal Supreme Court or the Court or Judge, respectively, shall, on the petition of the Agents of the Department of Public Prosecution, extend, on one occasion only in each affair, the legal terms for the references, up to double the time granted by this Code in the respective case. The petition shall be made in the notification of the order directing the return of the process, and the term of the extension shall begin to run from the date notice of the granting of the petition is given.

334, 1596 subdivision 6.

353). ART. 529. If the complaint shall have been filed without any documents being attached thereto, and the party defendant should state after the admonition, or before, that he cannot return the written petition, on account of its having been mislaid or lost, the Judge shall order that, at the cost of the person making such statement, a certified copy be made of the copy which should have remained in the files, and the suit shall be continued therewith, without interrupting the terms nor renewing (*retrotraer*) those which have already expired, for which purpose a certificate of what has taken place shall be made, the provisions of article 518\* being thereafter observed.

344 and citations.

354). ART. 530. In addition to the provisions of the preceding articles, the party who should fail to return the record shall be subjected to a criminal prosecution for fraudulent removal of documents filed in public archives.

355.) ART. 531. The party who should be comprised in the cases of the preceding articles, reserves his right to recover damages of the third person to whose fault the failure to return the record may be due.

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\* Amended by article 34 of Law 169 of 1896.

## CHAPTER XII.

*Transmission of records.*

356). ART. 532. Every transmission of records from one superior or inferior court to another, shall always take place by mail, under a sealed and addressed cover, with a statement of the contents upon the wrapper.

358.

The following article is supplemental:

357). ART. 69 of Law 105 of 1890. When it shall be necessary to transmit a document to another place which is of interest only to the party requesting its transmission, the Judge may deliver it to him for transmission to its destination, even though it be not through the mails.

358). ART. 533. If there should be no mail to the place to which the records are to be transmitted, they shall be sent by special messenger (*por expreso*), the cost of which shall be defrayed by the party interested, or other more economical means shall be employed, if possible; but in no case shall the records, or a portion thereof, be entrusted to one of the parties, when such party might derive some benefit from the loss or mislaying thereof.

Supplemented and amended by the following article:

359). ART. 70 of Law 105 of 1890. In every case the records may be transmitted at the request of a party, by courier (special messenger) or special mail, the cost of which shall be defrayed by such party, provided that such means be satisfactory to the Judge transmitting the records and that they be sent through the respective administration, in accordance with the post-office laws and regulations.

360). Expressly repealed by article 338 of Law 105 of 1890, and subrogated by

361). ART. 71 of Law 105 of 1890, which was expressly repealed, and not subrogated by article 87 of Law 100 of 1892.

362). ART. 535. For the purposes of the provisions of this chapter by records (*autos*) shall be understood not only the civil records (*expedientes*) but also the dispatches, letters rogatory and any papers forming a part of the process.

4.

The two articles which follow are supplementary:

363). ART. 67 of Law 105 of 1890. When the superior authority to which an appeal is taken should not reside in the same place as the Judge of the cause, the party interposing it must pay the postage necessary for the transmission and return of the record by mail, and fifty cents addi-

tional. Such payment must be made within eight days next after that upon which the record may have been received in the respective post-office.

364). ART. 68 of Law 105 of 1890. If the term of eight days should elapse without the payment of the postage being made, the Judge, on the petition of a party, shall call upon the person who interposed the appeal to do so. If three days after the demand the payment shall not as yet have been made, the said Judge shall declare the decision appealed from to be final after the hearing and determination of an incidental issue (*articulación*) in which the probatory term shall not exceed forty-eight hours, the Judge being permitted to make orders in furtherance of justice (*autos para mejor proveer*).

The Judge, in the same order in which he calls upon the party to make the payment, shall direct that a communication be sent to the post-master not to forward the record if said payment should be made after the expiration of three days.

308, 584.

## TITLE II.

### Evidence in Civil Matters.

#### CHAPTER I.

##### *Definitions and General Rules.*

365). ART. 536. Evidence is the means of ascertaining the truth or falsity of the facts involved in the judicial debate.

366). ART. 537. Evidence is divided into direct and indirect; full or complete (*prima facie*), and partial or deficient.

367 to 370.

367). ART. 538. Direct evidence is that which shows in itself, although in different degrees, the truth of the acts the subject of controversy, such as confession before the Judge, the declarations of eye witnesses.

Indirect evidence is that which does not in itself show the truth of the act questioned, but that of another act constituting the direct evidence such as extrajudicial confession, established by witnesses, and the declarations mentioned.

368). ART. 539. Full, perfect or complete (*prima facie*) evidence is that which, according to the law, leaves the Judge sufficiently instructed with regard to the truth or falsity of the matter to render judgment for or against the complainant.

Partial, deficient or incomplete evidence is that which in itself does not leave the Judge sufficiently enlightened for the purpose of rendering a judgment.

382, 422, 424.

369). ART. 540. Direct and indirect evidence may be full or partial.

422, 424.

370). ART. 541. Legal evidence is the following: 1. Confession of the party, in or out of court; 2. Legal presumption; 3. Indications or conjectures; 4. Testimony of witnesses or experts; 5. Public or private instruments; 6. Ocular inspection by the Judge of the cause; 7. Public reputation (*fama*); 8. Ancient monuments; and 9. The laws themselves when presented for the purpose of establishing what was observed at a certain time and was or is in force in another place, upon the matter in question.

558, 546, 547, 760, 577 to 582, 664, 926, 970, 971, 984, 1594. 395 to 399, 1757, 1763, 1764 of the Civil Code.

371). ART. 542. The burden of proof of a fact or thing denied by the defendant, rests on the complainant, and the former must be absolved if the latter should fail to establish what the defendant denies. The defendant must likewise prove the facts upon which he bases his exceptions.

86.

372). ART. 543. It is, hence, a general rule that the burden of proof of a thing affirmed rests on him who pleads it, and not on him who denies it, unless the denial should contain an affirmation. Hence, he who denies the competency of a witness, for example, must prove his point, because it contains the affirmation of the fact which causes the incompetency of the witness.

399.

373). ART. 544. The evidence must be confined to the matter the subject of litigation; irrelevant evidence, that is to say, that which neither benefits one party nor damages the other in the suit in which it may be adduced, is not admissible.

857.

374). ART. 545. The evidence must be adduced before the Judge of the cause, with the citation of the opposite party; but this is not an obstacle to the taking of testimony by a commissioned Judge, when this should be necessary.

447 to 450, 452, 453, 454, 518.

375). ART. 546. In order that the parties may produce their evidence within the proper term in each suit, the Judge must make an order, stating that he opens, calls or receives the cause for the taking of evidence, and from the date of the service of this order upon the parties, the term of the law or that designated by the Judge begins to run, without prejudice to each party presenting his evidence any time after being notified.

325, 328, 337, 376.

376). ART. 547. Justices and Judges must restrict the terms for the taking of evidence when they are not peremptory; and they cannot extend them to that allowed by the law, unless the party requesting the extension shall state and establish the necessity therefor.

727, first par.

377). ART. 548. Notice of every order granting or extending the probatory term must be served on all the parties.

878, 560.

378). ART. 549. There shall be no secrecy (*reserva*) in the evidence; the Secretary may communicate to any of the parties, upon his request, the evidence adduced by the opposite party, and also the testimony which may have been taken on the petition of the party making the request.

311.

#### EIGHTH AMENDMENT.

(Of Law 46 of 1876.)

379). ART. 550. The entire probatory term is proper for the asking and taking of testimony.

The testimony requested in time, must be taken and added to the record of the case at any stage of the proceedings, provided that a citation for judgment shall not have issued.

The probatory term having expired, only such instruments and documents which establish acts that have taken place after said term shall be admissible.

450, 559, 560, 876, 879, 908.

580). ART. 551. Whenever the examination of a thing by experts, the comparison of signatures or other similar proceedings are requested in evidence, the party who might be prejudiced by such evidence has the right to be present at the taking thereof, and must, therefore, be cited in advance; but the proceeding shall not be stayed by reason of his failure to attend.

381). ART. 552. The evidence adduced by each party shall be kept in a separate pamphlet.

382). ART. 553. In the absence of a legal estimation of evidence, the Judge shall give it a value according to his conscience.

368, 519 second par., 527, 558.

#### NINTH AMENDMENT.

(Of Law 46 of 1876.)

383). ART. 554. After the citation of the parties for judgment, no proceeding (*articulación*) regarding evidence shall be admitted.

583, 877, 878, 559, 560.



## CHAPTER II.

*Confession of the Party.*

384). ART. 555. Confession is the statement made by one of the parties of the truth of what the other party asserts with regard to his action or exception, deduced in court.

385). ART. 556.\* The confession made by a party, voluntarily and deliberately in answer to interrogatories, in answer to the complaint or in any other judicial act, that is to say, before the Judge of the cause and his Secretary, is full proof in the action in which it may have been made, and upon the point of fact to which it may refer. This confession is called judicial.

401, 406, 391, 393, 394, 395, 397, 530, 532, 533, 539, 544.

386). ART. 557. Expressly repealed by article 87 of Law 100 of 1892, and not subrogated.

387). ART. 558. In order that the confession may have the force of full proof, it is necessary that the person making it be capable of appearing in court by himself.

61 *et seq.*, 401, 858.

388). ART. 559. If a determinate thing or amount be sued for or inquired about, it is also necessary that the confession be determinate hereupon, in order that it may be efficiently binding upon the person making it; thus, if a person be sued for the payment of a thousand pesos, and he shall make answer that he does owe the complainant, without specifying the amount he owes, such confession is not efficient; but in such a case, the Judge may, *ex proprio motu*, or on the petition of a party, require the defendant to state the amount for which he is debtor and he shall be adjudged to pay only the amount he states, in the absence of other proof; this should be observed in similar cases.

389). ART. 560. Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

390). ART. 72 of Law 105 of 1890. The confession made in court shall be proof against the person making it under any circumstance, even though it be in a different action.

391). ART. 561.† Extra-judicial confession is that made out of court, in a conversation, in a letter, or by any other act or document whose purpose was not to serve as proof of the controverted fact.

A confession made before a Judge, not the one taking cognizance of

\* Amended by article 34 of Law 169 of 1896.

† Amended by article 34 of Law 169 of 1896.

the cause, nor commissioned by the latter, or not competent to receive it or order it taken, shall also be considered extra-judicial.

385, 532.

The following article is additional:

392). ART. 73 of Law 105 of 1890. No person shall be obliged to testify out of court as to personal acts or as to acts from which he may suffer some prejudice, excepting in the cases and with the formalities prescribed in Chapter VII of Title I, Book 2, of the Judicial Code, and this only, unless the person requesting a new declaration shall assure, under oath, that the first one has been lost through no fault of his.

234. Law 169 of 1896, article 34.

393). ART. 562. As a general rule, an extra-judicial confession does not produce anything but deficient proof or grave presumption.

Nevertheless, the confession which a debtor may make of the debt in the presence of the opposite party or of his attorney, with a statement of the amount or thing due, and of the reason or cause for which it is due, has the force of full proof, by virtue of which the person making the confession may be obliged to pay the debt, unless he shall prove that he has paid it, or been relieved therefrom in any other manner. But the aforesaid confession must be fully proved.

395, 397.

394). ART. 563. If in the confession referred to in the preceding article, the person making the confession should not state the reason for his debt, and the other party is able to prove it, the confession shall always have the force of full proof.

395). ART. 564. The confession made in a testament or at the moment of death, is also full proof against the heirs of the person acknowledging himself to be a debtor, or who confesses to having received what was owed him, unless the intention shall be seen in such confession of defrauding the heirs, or of violating some legal provision, as in such case the confession shall not be valid, unless the person favored prove the reason of the debt, or the payment he may have made.

382, 412.

396). ART. 565. If the testator should declare that a person is his debtor for a certain sum, and the heirs shall prove that the amount owed is greater, they shall be entitled to the recovery of the excess, unless the remission or waiver which the testator may have made of the excess be proved.

403.

397). ART. 566. The confession made by the parents in writing or in a formal entry, the authenticity of which may be sufficiently established, as to advances made to their children by reason of setting up in business, is also full proof.

398). ART. 567. The confession may be simple or explained.

A simple confession is that made by the party affirming the fact openly and frankly.

An explained confession is that which is made also acknowledging the fact, but adding circumstances or modifications which restrict or destroy the intention of the opposing party.

399). ART. 568. When the circumstance or the modification added in the explained confession may be separated from the act the subject of the question, or rather, when it is a real exception, the confession is called *dividual* or *divisible*, and it has all the force of an absolute or simple confession; unless the person making the confession shall prove the modification or circumstance added; but when this circumstance or modification is inseparable from the fact the subject of the question, it is called *individual* or *indivisible*, and it cannot be admitted in one part and be rejected in another by the adversary, who, if he shall desire to benefit therefrom, must prove the modification to be false.

400). ART. 569. No evidence adduced by the same party shall be admitted against the confession he may have made, unless it be pleaded that the confession was made through an inculpable error, in which case, upon proof of what the latter consisted, the merits of the confession are destroyed.

#### 1769 of the Civil Code.

401). ART. 570. If the confession shall not have been made with all legal requisites, anything which may invalidate it and destroy its legal value may be pleaded and proved.

#### 387.

402). ART. 571. The confession of an act which could not have occurred by reason of its being physically impossible, as if a person should state that one older than himself is his son, shall have no value whatsoever. In the same manner, a confession of acts which the person confessing could not have executed, is invalid.

403). ART. 572. The confession made by a person in his testament or in memoranda which he may have left, that another person is his debtor, is not proof against the latter.

#### 396.

404). ART. 573. No confession can be demanded or required upon shameful or criminal acts chargeable to the party who is to make answer, or to his ascendants or descendants, or to his spouse, or to his brothers.

405). ART. 574. A confession prejudices only the party making it; hence, if in bankruptcy proceedings one or more of the creditors should prove their credit by the confession of the common debtor, such evidence shall serve as a basis for the payment of said creditors from the property of the insolvent; but without prejudice to the other creditors who may have proved their credits by means other than the confession of the debtor.

406). ART. 575. When the party, in answer to the complaint, should agree to the facts stated by the complainant and to his right of action, such confession in addition to being proof, relieves the complainant from presenting any evidence; and then the Judge shall render judgment, without further proceedings, and shall fix a term within which the defendant is to fulfill the obligation the subject of the suit, if he is not to do so immediately, or if the law does not fix a term.

385, 856, 749, 750, 751.

407). ART. 576. It shall be understood that the defendant agrees to the substantial facts stated in the complaint, when he does not contradict them either directly or indirectly.

848, 854, 855.

408). ART. 577. When the Nation shall be the defendant, and the complaint should contain points of fact, even though the representative thereof agree to said facts, evidence shall always be taken in the suit to establish such facts.

856, 858. Law 169 of 1896, article 9.

### CHAPTER III.

#### *Presumption of Law.*

409). ART. 578. A presumption of law is the supposition which the law makes upon certain reasonable antecedents, that such a fact is true in order to deduce therefrom the consequences which the said law establishes.

He who has a presumption of law in his favor in a matter, places upon his adversary the burden of the proof of the obligation.

66, 1768 of the Civil Code.

410). ART. 579. Cases of legal presumption are those mentioned in the following articles, in addition to those which the law may establish separately.

411). ART. 580. He who shall have paid a sum by error, and shall be desirous of recovering it, must prove that he did not owe it, it being presumed that no one pays without owing. So that in this case, the legal presumption is in favor of the person who received. But if the latter should deny the payment absolutely, and the complainant should prove such payment, even though he do not prove that it was improper, it shall be the obligation of the former to return what he received, if he shall not prove that it was given in payment of a legitimate debt.

412.) ART. 581. If a father, after having left to a son by his testament all that the law permits him, by reason of *légitime* or betterment (*mejora*) shall direct that a certain sum should be restored to him, stating that it was given him for said son by a relative of his, or that it is the value of a thing belonging to the said son or the mother, or that he acquired it with said object in view, the legal presumption is in such case in favor of the heirs, and, consequently, the son favored must prove the truth of the debt confessed by the father.

395.

413). ART. 582. The law presumes that children born during matrimony are legitimate, if the parents should not be at a great distance from each other at the time that, taking into consideration the birth, the conception should have taken place, according to the substantive civil laws. But the presumption is destroyed by the statement of the husband, corroborated by the confession of the wife.

213 *et seq.* of the Civil Code.

414). ART. 583. The law presumes that a person is the owner of the thing which belonged to him at another time, or to his ascendants, or to the person whose heir he is; and consequently he shall be maintained in the ownership thereof, until another person shall actually prove that it belongs to him.

415). ART. 584. If a person shall prove that at some time he was the possessor of a thing actually in litigation, and maintains that he continues still in possession, the law presumes that he tells the truth, as long as the person disputing such possession shall not prove the contrary.

780, 3d paragraph, of the Civil Code.

416). ART. 585. If a person should receive a movable thing, in pledge, as a loan, or in deposit, it shall be presumed that he has not returned it to its owner, as long as he does not prove said return, and he is, therefore, responsible for the same, unless it shall have been lost by theft, force or robbery, or any other accident which, according to the law, relieves him

of the obligation contracted; but in every case he shall be obliged to furnish the proof necessary therefor.

63, 1604, 2203, 2206, 2247, 2252, 2281, 2428 of the Civil Code.

417). ART. 586. He who should promise his debtor never to demand the sum or thing which he may owe him, shall not have the right to demand it of the heir, if the latter should prove the promise made to the debtor; as the law presumes that he who promises a thing to another offers it equally to his heirs, even though the latter should not be expressly named.

But if the creditor were able to prove that he made no mention of the heir, especially in order that the latter should not benefit by the promise, as it was simply a favor extended to the debtor during his lifetime, the heir shall then be obliged to make the payment.

1155 of the Civil Code.

## CHAPTER IV.

### *Indications and Conjectures.*

418). ART. 587. An indication is a certain and known fact, which by reason of its more or less intimate relation to the fact in question, may serve to incline reason to the belief in the reality of the second fact.

422, 423.

419). ART. 588. A conjecture is the favorable judgment which we form as to the truth of the matter in controversy, by virtue of data which is fallible but not unworthy of consideration.

422, 424, 428.

420). ART. 589. A single indication is not full or complete proof, unless it be a necessary indication. Indications are necessary when the connection or relation between the fact indicated and the fact the subject of the investigation is such, that if one existed, the other could not but have existed.

421). ART. 590. Unnecessary indications form full proof only when they are apparent (*vehementes*) and numerous, but connected with each other, all of them tending to establish beyond doubt the truth of the fact in controversy.

424.

422). ART. 591. Incomplete proof may be weighed as indications and as sources of conjectures, and in a plural number may form complete proof, if they have the requisites mentioned in the preceding article.

423). ART. 592. When many indications relate to one indication only, and when the arguments upon one fact depend all upon a single argument, the sum of the latter, no matter how numerous they be, do not form full proof, and all together form but one single indication and one single argument.

424). ART. 593. Indications and conjectures are more or less apparent (*vehementes*) in proportion to the greater or less relation or connection between the facts which constitute them and that which it is desired to ascertain.

Therefore, direct incomplete evidence furnishes, in equality of circumstances, indications and conjectures superior to those arising from indirect incomplete evidence.

421.

425). ART. 594. Accessory facts which furnish the indications or the conjectures relative to the fact which is being ascertained, must be fully proved; and they shall never be proved by means of other indications.

## CHAPTER V.

### *Witnesses.*

426). ART. 595. A witness is any person, man or woman, who testifies in an action upon the facts controverted therein.

437 to 442, 463, 464, 465, 470, 478, 479, 521, 522.

427). ART. 596. In order that a witness may be competent and his testimony worthy of consideration, it is necessary that he should not be excepted by reason of lack of knowledge, of probity or of impartiality.

428). ART. 597. Lack of knowledge is presumed: 1. In an insane person, an imbecile and an intoxicated person, while in such condition; 2. In him who for any other cause may be deprived of reason at the time of testifying; 3. In a person under fourteen years of age; but he who shall have attained said age may testify even to acts which have occurred before, if he shall show that he recollects them well. The testimony of a person under fourteen and over ten years of age, may serve to form a conjecture, which shall be more or less grave according to the development of the intellectual faculties of the deponent.

419, 432, 465.

429). ART. 598. The following cannot be witnesses, by reason of want of probity: 1. He who shall have some time testified falsely; 2. A falsifier.

433.

430). ART. 599. The following cannot be witnesses, by reason of want of impartiality: 1. The descendant in favor of his ascendant, nor *vice versa*, excepting in causes of age or relationship; 2. A woman for her husband, nor the latter for his wife, nor a brother for another, while living under the paternal power; 3. He who is a party in the cause and his servants; 4. A bitter enemy (*enemigo capital*); 5. The attorney, defender, or patron (*patrono*), for his party or client; 6. The tutor or curator for his ward or minor, nor the latter for his tutor or curator; 7. He who sold a thing, in a suit involving said thing and in favor of the purchaser; and 8. The companion, partner or co-owner, in a suit upon the common thing or business.

434.

431). ART. 600. The members of municipal corporations and the members of congregations, colleges or universities, may testify in suits which only interest in common their respective corporations or communities.

432). ART. 601. Witnesses incompetent on account of a lack of knowledge cannot be presented by either of the parties, excepting a minor, who may be presented for the purpose of article 597,\* in its second part.

433). ART. 602. Witnesses incompetent by reason of want of probity cannot be presented in a suit by any of the parties.

429.

434). ART. 603. Witnesses incompetent by reason of want of impartiality, may be presented by the party opposing that in whose favor the law supposes he has an interest in testifying; and their testimony shall be made competent by this mere fact, in all parts thereof, unless the party who presented such witnesses shall have protested at the time of presenting them, that only the favorable portion of their statements was to be considered.

430. 435.

435). ART. 604. Notwithstanding the provisions of the preceding article, one spouse can never be required to testify against the other, nor a son against his father, nor the latter against the former.

436.

436). ART. 605. Nor can the following be required to testify: 1. The lawyer or attorney regarding the confidences received by him from his clients with regard to the suit he manages; 2. A confessor, regarding

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\* Ordinal 428.



the revelations made to him by the penitent person; 3. The Judge of the cause, when his testimony should be unnecessary by reason of the sufficiency of other evidence on the same fact.

437). ART. 606. A witness cannot alone establish full proof, but only a strong presumption when he is competent.

438). ART. 607. Two witnesses competent to testify, who corroborate each other as to the fact and the circumstances of mode, time, and place, make full proof.

445, 446.

439). ART. 608. The testimony of a witness deposing upon some fact by reason of having heard it from others, shall not have any force, unless the deposition is on a very old matter, or when it is desired to establish the public reputation. ✓

440). ART. 609. Declarations as to words never form proof as to the facts, but they do as to the words, whenever the witness shall testify to having heard them expressed, and in such case the uniformity of the two witnesses must refer to the words and likewise to the circumstances which may alter or modify their meaning.

470.

441). ART. 610. The statement of a witness notably contradicting himself in the same declaration, shall not be conclusive as to mode, place, time and other circumstances of the matter. Nor shall the testimony of a witness testifying under a bribe or corruption have any value whatsoever.

443.

442). ART. 611. Expressly repealed by article 398 of Law 105 of 1890, and subrogated by the following:

443). ART. 75 of Law 105 of 1890. When the testimony of the witnesses presented by one party or by both, should be contradictory so that with regard to each party there may be a plural number of competent witnesses, the Judge must consider the testimony of those who, according to the rules of legal judgment (*critica*) he should believe are telling the truth or are closer thereto, and who have the better reputation, even though there be a greater number on the other side. If they should be equal as to the circumstances of their statements and persons, he must judge by those greater in number; and if there should be equality in the number also, he must ignore the witnesses on both sides, and decide the cause from the result of the other evidence.

444). ART. 612. Should there be contradiction between a public instrument and the statements of the witnesses present at the execution

thereof, the instrument must be credited if it accord with the protocol or register and the Notary enjoyed or enjoys a good reputation; but if the Notary should not have enjoyed or does not enjoy a good reputation, and the instrument should have been recently made, the witnesses are to be credited, even though said instrument agree with the protocol.

445.

✓ 445). ART. 613. In order to prove the falsity of an instrument executed before a Notary, four competent witnesses are necessary to depose that the party was in a different place on the day of the execution of the instrument; but if said instrument were a private one, two witnesses to testify to said effect shall be sufficient.

444, 526, 527, 528, 446.

446). ART. 614. In order to prove the payment of a debt by witnesses when evidence of said debt is embodied in a public instrument, five witnesses are necessary to testify that they were present when the payment was made.

447). ART. 615. In order that the statements of the witnesses may be considered as proofs in ordinary actions, it is necessary that their testimony be received or ratified by the Judge of the cause within the probatory term and with the previous citation of the opposite party, reserving the cases of article 619.\*

450.

448). ART. 616. When in such actions the depositions of witnesses taken before another judge or for another matter, should be presented, it shall be necessary that during the probatory term, and on the petition of the person interested, they be ratified after the citation of the opposite party, without which requisite they cannot be considered as proof when judgment is rendered.

450, 451, 472.

449). ART. 617. When after a summary investigation a suit should be prosecuted in which there is a probatory term, the witnesses shall be ratified after the citation of the opposite party, without which requisite the statements of such witnesses cannot be considered as proof in the final judgment.

472.

This and the two articles preceding it have been supplemented by the following article:

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\* Ordinal 452.

450). ART. 74 of Law 105 of 1890. In order that the statements of the witnesses may be considered as proof in the suits having a probatory term, it is necessary that they be received by the Judge of the cause or by the commissioner, during the course of the suit, before citation for judgment, and provided that the taking of the depositions should have been requested during the said probatory term.

If the depositions should have been taken out of court, the witnesses must ratify the same during the course thereof, before the Judge of the cause or the commissioner, it being furthermore necessary that the conditions referred to in the preceding paragraph be attendant.

447, 448, 449, 451, 472.

451). ART. 618. When by reason of the death of a witness who had testified judicially, his deposition could not be ratified, the party presenting the statement of such witness must request that, with the citation of the opposite party, competent witnesses testify to the veracity and good reputation of the deceased witness, and that the Judge and the Secretary before whom the deposition was made, declare if possible, whether such deposition was really made by the said witness. After such confirmation, the deposition shall be considered as legally ratified.

452). ART. 619. The testimony requested during the probatory term may be taken through the commissioned Judge, when the witness, by reason of his advanced age, sickness, absence at a distance of more than fifteen kilometers, or other grave impediment, should not be able to appear before the Judge of the cause.

374, 453, 454, 455.

453). ART. 620. When the reason for the delegation of the examination of the witnesses should be their absence, the commission must be entrusted to one of the Judges of the place of residence of the witness, and in the event of the impediment or recusation of said Judges, to their legal substitutes, transmitting to them the interrogatories presented, which must first be communicated to the opposite party, together with the order directing the issue of the dispatch, in order that if cross interrogatories are made, they may be added to the said dispatch.

454, 455.

454). ART. 621. In case of the absence of the witnesses, the Judge of the cause may also, if he deem it advisable, or on the petition of any of the parties, direct that the witnesses appear before him to give their testimony, at the expense of the party who may have requested their depositions, in the first case, and of that who may have requested the appearance, in the second.

The witnesses on such occasion, must be reimbursed for their traveling expenses and their stay in the place where they testify for such time as may be indispensable.

455.

455). ART. 622. If the witnesses reside in a foreign country, letters rogatory shall be transmitted, through the Secretary of Foreign Affairs of the Union, to one of the judicial authorities of said country, who may, under the laws of the same, be of competent jurisdiction for this purpose, in order that he may receive the depositions and return them to the said Secretary, through the Colombian Diplomatic or Consular Agent, or that of a friendly nation residing in said country.

In the case of this article the depositions may also be received by the Diplomatic or Consular Agent of the Union, if the witnesses should be willing (*se allanaren*) to give their testimony before them, and it should not be inconvenient to give it before the authorities of the foreign country in which the witnesses may reside.

The cost of taking the testimony, in the case of this article, shall be defrayed by the party requesting it.

The testimony, when received by the respective foreign authority, shall be authenticated by the respective Colombian Diplomatic or Consular Agent, or by that of a friendly nation.

104.

456). ART. 623. The Judges of First Instance shall send the letters rogatory, in the case of the preceding article, to the President or Governor of the respective State, in order that the latter may transmit them to the Secretary of Foreign Affairs of the Union.

457). ART. 624. Persons prevented by sickness or by any other cause, the matrons or mothers of a family and unmarried ladies, shall have their testimony or confessions taken in their houses or dwelling places by the Judge of the cause or by a commissioner. In such cases, the parties shall be advised of the day and hour when the proceeding is to be had, to permit their attendance, if they should so desire; but their failure to be present shall not be an obstacle to the taking of the statement or confession.

460.

458). ART. 625. The summons of the witnesses or experts who are to testify, shall be made by means of a subpoena signed by the Judge of the cause, in which shall be stated the day, the hour and the place where they are to appear, and the purpose of the citation; such citation

shall be made for the same day, or for one of the three following, according to the distance and urgency of the case.

460, 461, 462.

459). ART. 626. The subpœna shall be served upon the witness by the Secretary, or by an official of the superior or inferior court, under the liability of the Secretary, who, as well as the official in a proper case, shall require that the person cited sign the subpœna, and that if prevented from appearing, he so state.

Should he not wish or be unable to sign, the bearer of the subpœna, if he be a subordinate employee of the inferior or superior court, shall call a witness by whose testimony the fact of the witness having been cited can be established, and if the Secretary should have been the bearer of the subpœna, his mere statement in writing shall be sufficient evidence of the citation.

198.

460). ART. 627. Any person who shall have been summoned in legal form as a witness or judicial expert, must appear to give the testimony asked of him; should he fail to do so, compulsory process shall be employed in the form of fines until he shall appear or by arrest for disobedience to the order of the Judge. Said fines may be as high as ten pesos.

From this provision are excepted: Senators and Representatives, while enjoying immunity, the President of the Republic, and the Secretaries of State, the Justices of the Federal Supreme Court, the Attorney General of the Nation, the Governors or Presidents of the States, Generals in service and every superior Judge with respect to the one before whom he is to testify; all these persons shall give their testimony by means of sworn certificates, for which purpose the Judge or Justice of the cause shall send them a communication, transmitting a copy of what may be necessary, or the original proceedings, if this should not be inadvisable or there should be no risk of loss.

457, 458, 1604.

Supplemented by the following:

461). ART. 76 of Law 105 of 1890. From the provisions of the first paragraph of article 627\* of the Judicial Code, are excepted, in addition to the persons referred to in the second paragraph of said article, the following: The Vice-President of the Republic, the Ministers of the Cabinet (*del Despacho*), the justices of the superior courts and the prosecuting attorneys of the same, and the members of the Council of State.

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\* Ordinal 460.

The Archbishops, Bishops, Provisors and Capitular Vicars, are also excepted.

All those excepted shall testify as provided in the second paragraph of the said article.

462). ART. 628. A note of request shall be sent to the Diplomatic agents or ministers of foreign nations whose testimony may be desired, with a copy of what may be proper, and if the Agent or Minister thus called upon should be willing to testify, he shall do so by means of a written certificate.

This provision applies to the members of the household and of the family of foreign diplomatic agents or ministers.

If the testimony requested were that of some servant or domestic of such diplomatic agents, it shall be received in the ordinary form, after securing the consent of the respective Agent or Minister, which shall be requested by means of a note.

Both in the case of the preceding paragraph as in the first one of this article, the note referred to therein shall be addressed through the Department of Foreign Affairs of the Union.

458.

463). ART. 629. The witnesses, before testifying, must take an oath, before the Judge and his Secretary, not to depart from the truth.

1599.

464). ART. 630. After the administration of the oath, the articles of the Penal law regarding perjury and false witness, in civil matters, shall be read to the witness.

465). ART. 631. A person under twenty-one years of age and one over fourteen, does not need a curator in order to testify; the Judge shall see that they are not taken advantage of by captious questions.

428 subdivision 3, 432.

466). ART. 632. The witnesses shall be examined separately and their depositions shall be written in the same manner, and be signed by the Judge, his Secretary, and by the deponent or by a witness, if the former should not be able, not wish, or not know how to sign.

#### TWELFTH AMENDMENT.

(Of Law 53 of 1882.)

467). ART. 633. Every Judge or Justice must certify, under his liability, at the end of each deposition, that he received it directly and personally, hearing it from the witness and causing it to be written in his presence, and asking the witness all questions tending to ascertain

the full truth which is being investigated by means of truthful and complete evidence.

469, 470, 471.

468). ART. 634. The witness shall not be interrupted in his statements, and they shall be written exactly as he makes them, it being necessary that each one be read to him after being written, and the entire deposition when concluded, of which mention shall be made in the said deposition.

474, 478, 479, 480.

469). ART. 635. An answer of the witness having been written, the Judge shall immediately ask him the following questions, if his answer should not already be known from the reply:

“How does he know of the act to which he testifies; did he see or hear it, or does he know thereof in some other manner? On what day, at what time and at what place did the act referred to take place?”

467, 471.

#### THIRTEENTH AMENDMENT.

(Of Law 53 of 1882.)

470). ART. 636. In no case shall the statement of a witness serve as evidence, if he fails to express clearly and distinctly the means by which he has secured information of the acts to which he testifies or which he claims to have a knowledge of, and if it shall not result from such statement that the witness testifies by reason of his own direct perceptions; excepting the cases in which the laws permit a declaration upon a knowledge formed by inference; but in such case the ground therefor must be stated. The evidence of experts is governed by the special provisions providing therefor.

467, 469, 471, 440.

#### FOURTEENTH AMENDMENT.

(Of Law 53 of 1882.)

471). ART. 637. The Judge or Justice shall address to the witness all questions relative to the circumstances of the day, hour and place where the act testified to occurred, and to all other conditions which may lead to ascertain the degree of certainty with which the witness testifies, and the entire truth of the acts, and the intellectual and moral conditions of the witness. With regard to the chronic acts which the

witness may affirm, he must be asked and he must testify as to how he had knowledge of the acts from which the chronic quality of those of which he claims to have knowledge may reasonably be inferred.

467, 469, 470.

472). ART. 638. The ratifications of depositions received extrajudicially, shall not be valid, if the facts declared should not be repeated, that is to say if the witnesses confine themselves to stating that they affirm or ratify, without having anything to add or take away.

448, 449, 450, 451.

473). ART. 639. If the witness should state that in order to make answer to a question he must recollect the facts or examine documents, and request time to do so, the Judge shall grant it if he should believe it reasonably necessary.

244.

474). ART. 640. An answer that "the context of the question is true" shall not be admitted, but the context of the said question shall be written out as the answer, if nothing further be added.

468.

475). ART. 641. When the witnesses should give evasive or ambiguous answers, or should refuse to answer pertinent questions, the Judge may compel them to answer categorically, by the imposition of fines or arrest, and even by imprisonment "*incomunicado*," if the gravity of the matter, the malice of the answer or the audacity of the refusal should so require.

245, 248, 476.

476). ART. 642. The provisions of the preceding article are not an obstacle to the witnesses replying that they do not know or do not remember the facts upon which they are questioned; or refusing to answer in the cases in which it is not licit to oblige them to reveal the matters upon which they may be questioned.

477). ART. 643. The proceedings upon depositions shall be drafted without leaving blank spaces, and without abbreviations, and an endeavor shall be made to avoid corrections and interlineations; but if it should be necessary to change or interlineate one or more words, attention shall be called thereto at the end of each proceeding, after which those who are required to sign it shall do so.

478, 480.



478). ART. 644. Upon the conclusion of the deposition, when it is read to the witness, he may make the changes, explanations and additions which he may deem necessary, which shall be clearly stated at the end of the deposition, without changing thereby what may already be written therein.

468, 480.

479). ART. 645. Witnesses who do not know how to write, have the right to seek a person in whom they have confidence to sign for them and read the deposition to them, in order to assure themselves that what they stated is exactly expressed.

480). ART. 646. The witness, before leaving the room where he gave his testimony, and without having spoken to another person, may improve or explain the deposition which he may have already signed; and the Judge has the power to call at any time a witness to explain any doubtful or obscure passage in his deposition, unless citation for judgment shall already have issued.

477, 478.

481). ART. 647. Each party may challenge the witnesses which the other party may have presented; but witnesses can be challenged only for a cause which invalidates testimony according to this chapter.

428, 429, 430, 432, 434.

482). ART. 648. When the cause for challenge should be lack of impartiality, it is necessary that the person interested plead and prove the cause of challenge, in order that it may be taken into consideration in weighing the evidence.

483). ART. 649. The interrogatories of questions shall remain in the possession of the Judge of the cause, or of the Commissioner, in a proper case, and be held confidentially under the strictest liability, up to the moment of the examination of the witnesses; the questions shall be read immediately after reply shall have been made to the principal interrogatory, or after the answer to each question, at the will of the party whom he presents.

#### TENTH AMENDMENT.

*(Of Law 46 of 1876.)*

484). ART. 650. The Secretaries shall inform the parties of the depositions received, and it shall be the duty of the parties to call the attention of the Judges to the errors which may have been committed in their reception, so that they may order the correction thereof; and the Judge shall do the same when he shall know of the defects which they may contain, even though the parties should not have complained.

## CHAPTER VI.

*Experts.*

485). ART. 651. In every cause whose elucidation shall depend upon the principles of some science or art, or in which it may be necessary to make some valuation or appraisal, experts shall be appointed; they shall also be appointed whenever it should be necessary to translate documents into the Spanish language, and when handwriting is to be compared.

499, 501, 509, 551 to 558, 561.

486). ART. 652. By an expert is understood a person well known to be qualified and educated in the science and art to which the point upon which his judgment is to be heard, may belong. Whenever there are any available, professors holding diplomas or having an office as such, shall be preferred.

487). ART. 653. Each of the parties shall appoint an expert, if all should not agree upon the appointment of one, and the Judge shall appoint another, to provide against disagreement between them, which shall be decided by a majority of all the experts; but in the event that all should disagree, as to the amount, arithmetical means shall be adopted.

The appointment which may be made by the Judge shall be communicated to the parties, and notice of the appointment made by each party shall be communicated to the opposite one.

489, 493, 509, 510, 498, 1294, 1295.

488). ART. 654. If any of the parties should not appoint his expert, within the term allowed him, such expert shall also be appointed by the Judge.

489). ART. 655. If the litigants should number more than two, one expert shall be appointed by those who support the same claims, and another by those who contradict them. If no agreement can be reached for this appointment, the Judge shall write the names of the experts proposed upon slips of paper, and the one drawn by lot, shall discharge the duties thereof.

1295.

490). ART. 656. The functions of the experts appointed are: to examine into the reality of the facts or things upon which they are to submit an opinion, the physical or moral condition of persons; to make the measurements or appraisals necessary, and to present their decisions in writing, stating the ground therefor.

They shall perform their duties together, and those who agree shall draft their report in a single statement signed by them; those who should not agree, shall submit their report separately.

493.

491). ART. 657. The experts, before proceeding, must swear in the presence of the Judge and his Secretary, to discharge their trust to the best of their knowledge and ability, and within the term which may have been allowed them.

1599.

492). ART. 658. The Judge shall clearly state in the order appointing the experts, the purpose of such appointment, and the term within which they are to discharge the duties entrusted to their skill, according to the conditions of time, place and other pertinent ones, and if there should be delay, compulsory process may be employed to force the experts to discharge their trust.

498, 505.

493). ART. 659. In case of disagreement, the third expert appointed shall repeat the work, after the expiration of the term for the challenge without any having been brought, the persons interested and the other experts attending in the form already stated.

490, 1295.

494). ART. 660. Repealed expressly by article 338 of Law 105 of 1890, and subrogated by the following:

495). ART. 77 of Law 105 of 1890. In case of obscurity or insufficiency in the report of the experts, the necessary explanation may be requested, or the proper extension, by any of the parties, or by the Judge *ex proprio motu*. And if their report were erroneous, by reason of the experts having proceeded under an essential error, fraud or ignorance, upon one of these defects being summarily proved, the proceeding must be had again, on the petition of any of the parties, and with the intervention of other experts.

An order may likewise issue, on the motion of the Judge or of one of the parties, that the experts give the reasons for their report.

497.

Supplemented by the two following:

496). ART. 31 of Law 100 of 1892. The petition requesting that the experts explain, amplify or give the reasons for their report, in accord-

ance with article 77 of Law 105 of 1890,\* must be made within three days from the date of service of notice of the order directing that the parties be informed of the statement of the experts; and the Judge shall be allowed the same term to order such things *ex proprio motu*.

The petition for a new proceeding, in the event of the experts having proceeded under an essential error, fraud or ignorance, must be presented with the proper voucher, within six days, counted in the same manner.

497). ART. 78 of Law 105 of 1890. The Supreme Court and the Superior Tribunals, by an order in furtherance of justice (*para mejor proveer*), made by the Justices when the matter shall have passed to their consideration for decision, may order, if they deem it advisable, that a new appraisal be made, by experts which the said Court or Tribunal, in a proper case, shall appoint.

495, 911 to 915.

#### ELEVENTH AMENDMENT.

(Of Law 46 of 1876.)

498). ART. 661. When the experts appointed by the parties should not appear to make their report within the term which the Judge may have allowed them, or when they make it in a vague and indeterminate manner, the Judge shall appoint another expert *ex proprio motu* in their place.

492.

The following article is supplemental:

499). ART. 79 of Law 105 of 1890. The report of the experts is not in itself full proof; it must be weighed by the Judge or Justices, when rendering final judgment, taking into consideration the ground upon which the experts base their report, and the other evidence adduced in the proceedings. Consequently, it shall be the duty of the Justices and Judges to fix the value or estimated value of the things which must be appraised or valued in order to decide the controversy, but they shall state the reasons for their determination.

382, 501, 558.

500). ART. 662. Expressly repealed by article 338 of Law 105 of 1890 and subrogated by the following:

501). ART. 80 of Law 105 of 1890. The declarations of professional persons upon facts which are subject to the senses, and upon which, in

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\* Ordinal 495.

accordance with their profession, they express their opinion with certainty, as a consequence of such facts and the indisputable principles of the science, form full proof; but what they may state, in accordance with what they presume, shall form only the proof of indications, more or less strong, according to the greater or less skill of those who testify and the degree of certainty with which they depose.

588.

502). ART. 663. The expert appointed by the Judge may be challenged by any of the parties before he makes his report in writing, for the same causes for which witnesses may be challenged.

428, 429, 430, 504, 513, 511.

503). ART. 664. A party or individual cannot challenge his own expert except for a legal cause occurring after the appointment or which was not learned until after such appointment. But the expert appointed by one of the parties may be challenged by the other, for a legal cause prior to or occurring after the appointment.

504.

504). ART. 665. The challenges must be interposed before the expiration of the third day after the appointment of the experts.

The challenge having been allowed, the expert shall be replaced in the same manner in which the appointment may have been made.

505). ART. 666. In the case of survey or ocular inspection, the experts shall conform to the provisions of this Book for such cases.

In the examination of authentic, public or private documents, the experts shall act in accordance with the orders of the Judge contained in the order of their appointment.

In the other cases in which an examination by or the intervention of experts may lie, they shall confine their examination and opinion to the determinate act or matter with regard to which they are to discharge their trust.

490, 492.

#### TWELFTH AMENDMENT.

(Of Law 46 of 1876.)

506). ART. 667.\* When it shall be necessary to fix the value of an estate with respect to which there existed an official appraisal upon the tax lists of the States, the value which may have been given it

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\* Expressly repealed by article 338 of Law 105 of 1890, and not subrogated.

therein shall be observed, unless the party prejudiced by such valuation shall establish that he did not consent thereto, in which case the valuation shall be ordered fixed by experts.

507). ART. 668. The report of the experts shall be communicated to the parties in order that the latter may state what they may deem proper.

508). ART. 669. Whenever experts or interpreters are spoken of in this Code, it shall be understood that the provisions of this chapter are to be observed with regard to the same; excepting when in some case special provisions with regard to their appointment, challenge, etc., may be made.

509). ART. 670. The Judge must appoint interpreters in the following cases:

1. If any of the litigants or of the witnesses should not understand the Spanish language, nor be able to make himself understood therein, and it should be necessary to interrogate or examine him.
2. If any of the witnesses should be deaf and dumb and not be versed in the art of writing; and
3. If any instrument or paper written in a language other than Spanish should be presented.

485, 510.

510). ART. 671. For each of the cases of the preceding article, two experts shall be appointed, without which the proceeding shall be null; but if there should be one expert only in the place, he alone shall serve as interpreter, and the proceeding shall be valid, provided that the impossibility of obtaining two interpreters be stated.

487, 509 first par., 515.

511). ART. 672. In order to be an interpreter it is necessary to have attained fourteen years of age, and have a perfect knowledge of the Spanish language, of that of the litigants or witnesses not conversant with the latter, and of that in which the document to be translated may be written.

428, 432, 513.

512). ART. 673. The interpreter, on accepting the office, shall promise under oath: 1. To transmit to the litigants or witness, faithfully, in his respective language, the words of the Judge, and to the latter the answers of the former in the Spanish language; and 2. To faithfully perform the duties of his office if acts other than those mentioned in the preceding number may be involved.

513). ART. 674. The interpreter may be challenged by any of the

litigants for the same causes and in the form in which witnesses and experts may be challenged. The ruling of the Judge allowing or disallowing the challenge of the interpreter, cannot be appealed from.

502, 428, 429, 430, 511, 768, 1465.

514). ART. 675. An expert or interpreter who shall, without just cause, refuse to discharge the trust confided to him, or to express his opinion, shall be compelled to do so by means of fines, in the same manner as witnesses, being subject to the same liability as the latter for their failure to obey the Judge.

515). ART. 676. In places where there are official interpreters, the latter shall be preferred by the Judges. Others shall be appointed, as prescribed, when such interpreters are prevented from appearing or cannot be found, if the matter be of an urgent character.

510.

## CHAPTER VII.

### *Public or Authentic Instruments.*

516). ART. 677. A public instrument is that executed before a notary and filed in the respective protocol. ✓

523. 2577, 1758 of the Civil Code.

517). ART. 678. Authentic documents are: 1. Those issued by officials who occupy an office by public authority, in the exercise of their functions; 2. Documents, books of minutes, by-laws, registers and tax lists on file in the public archives of an official character, and the copies authorized by the respective secretaries or officials; 3. The certificates of births, marriages and deaths, issued in accordance with the entries upon the respective books, by those having charge of the register of the civil status; and 4. Judicial proceedings of all kinds, and final judgments (*ejecutorias*) and communications issued in legal form.

525. 1758 of the Civil Code.

518). ART. 679. In order that the authentic documents mentioned may be considered as proof in the judgment which was preceded by a probatory term, it shall be necessary: 1. That the documents adduced in the suit without citation, be compared with their originals, after citation, unless the person prejudiced thereby shall have assented to said documents, which assent must be express, if documents are in question whose originals are not signed by said person, and implied only, in accordance with article 694,\* if they should bear his signature; 2. That

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\* Ordinal 533.

the documents to be obtained by the parties during the suit, be requested by the Judge of the cause of the respective office, after citation of the party against whom they are to be brought; and 3. That if the certified copy requested should be a part of a record or of a document only, there be added thereto that which the opposite party may indicate, if it should bear relation thereto or be pertinent.\*

525, 519, 374.

### THIRTEENTH AMENDMENT.

(Of Law 46 of 1876.)

519). ART. 680. When an official holding an office under public authority, shall issue a document of which there is no original in the respective office, he shall retain a copy of the document issued in his office, in order that, if it should become necessary, it may be compared, in accordance with the provisions of article 679 † of the Judicial Code.

If for any cause the copy should not be found, the documents, papers or antecedents which the person issuing the certificates had before him in so doing, shall be examined, in order that the exactness of such certificate may be established; and if it should also be impossible to find such antecedents, the Judge shall give the certificate the weight of evidence according to the general provisions regarding evidence, and that most in accord with the principles of equity.

Authentic documents shall be compared only when the party opposing that presenting them, shall charge that they are false.

382.

520). ART. 681. Public instruments always, and authentic documents when obtained in the manner already stated, are full proof as to the contents thereof.

1759, 1765 of the Civil Code.

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\* Although public instruments are authentic documents, in accordance with the Civil Code, as ordinal articles 516 and 517 make a distinction between instruments and authentic documents, the provisions of No. 1 of this article regarding the latter are not applicable to the former. Instruments are subject to the provisions of ordinal article 374, if a copy be requested during the probatory term, or to the formality of reference, in accordance with ordinal article 545, if a certified copy thereof be presented during the probatory term. No. 3 of the article annotated is in agreement with ordinal article 524.

† Ordinal 518.



## TENTH AMENDMENT.

*(Of Law 53 of 1882.)*

521). ART. 682. The evidence of witnesses is not admissible to establish facts which should appear in documents or written evidence pre-established by the laws, as for example, the fact of a person being or having been a public employee; the judicial or administrative acts of which there should be a record in the offices, and in general, any fact with regard to which the law prescribes that a written record be kept.

32. 1767, 1760 of the Civil Code and citations. See also articles 91 to 93 of Law 153 of 1887. Other pertinent articles of the latter law appear also in the citations to article 1760 of the Civil Code.

## ELEVENTH AMENDMENT.

*(Of Law 53 of 1882.)*

522). ART. 683. In case it be proved that the archives or original documents in which the facts referred to in the preceding article should appear, have disappeared, the person interested must have recourse to those documents which may replace those lost, or make it probable that they existed, and in such case, the testimony of witnesses shall be admitted for the purpose of completing the evidence. The evidence of witnesses is also admissible in the absolute absence, properly proved, of the pre-established and written proof; the proof must be directed to establish the motives for which such proofs have disappeared.

The provision of this article does not affect the special provisions in accordance with which written evidence is required to the exclusion of all other.

523). ART. 684. A public instrument shall be presented in the form of an authentic copy, as the register or protocol of the Notary must not leave the Notarial office. If the register or protocol should not exist and there should be in the place of the action a person who possesses an authentic copy of the instrument desired, the party interested may demand that the holder thereof present said authentic copy to the Court, in order that a second copy may be made and attached to the record.

522.

524). ART. 685. If the public instrument to be presented as evidence should be of interest to a number, or should consist of a number of parts, such as testaments, instruments of partition, and other similar docu-

ments, it is not necessary that a full copy thereof be made. It shall be sufficient that such part as may be necessary to establish the intention of the person interested be copied, unless the opposite party should charge that it is false or null, or charges some other defect which affects the instrument in general, in which case it must be submitted in full.

525). ART. 686. Authentic documents shall be issued in the form of copies authenticated, under the liability of the officials charged with the custody of the originals, and the intervention of the persons interested shall be confined to an indication of what is to be certified to or an authentic copy made of.

522.

526). ART. 687. When an instrument shall be presented, authenticated by an unknown notary, if the opposite party of that presenting it should object thereto charging its falsity, denying the character of a notary on the part of the person who appears to have authorized it, the person exhibiting the instrument shall be obliged to prove that at the time and place to which it refers, the person who authorized it as a Notary held such office.

527, 528.

527). ART. 688. If the instrument should be objected to as false, because the signature of the Notary who authenticated it is different from that which he himself has affixed to other instruments, and this difference should be proved by experts, the falsity of the instrument must not for this reason alone be declared, but the Judge, if not able to obtain the declaration of the Notary himself, must enlighten himself with all the data furnished him from the record and which he may be able to obtain, and decide, consequently, as to the falsity or authenticity of the instrument, according to what he may find most in accordance with the truth.

526, 528, 382, 444, 445.

528). ART. 689. If the Notary whose name appears signed to an instrument shall declare that he did not authenticate it, such instrument shall have no force as proof, if he should in addition give satisfactory explanations as to its existence in the protocol.

526, 527, 444, 445.

529). The substantive law shall determine the form and the cases in which public instruments are to be drawn.

2576 to 2609 of the Civil Code, and citations to the last article.

## CHAPTER VIII.

*Private Documents.*

530). ART. 691. Promissory notes, receipts or simple I. O. U's, obligations or other private documents of this character, have the force of a judicial confession with regard to their contents, provided they be acknowledged, before a Judge of competent jurisdiction, by the person who signed them.

385, 533, 535, 539, 542, 544, 540.

531). ART. 692. In addition, with regard to the documents mentioned in the preceding article, the provisions of the substantive civil law shall be observed, and with regard to bills of exchange and other commercial paper, the provisions of the Code of Commerce.

1761 to 1766 of the Civil Code. 91, 92, and 93 of Law 153 of 1887.

532). ART. 693. The acknowledgment that one of the parties may make in court, during the probatory term, as to the contents of letters and other papers, shall have the same force as a confession.

385, 391.

533). ART. 694. A document shall be considered as acknowledged when having been a part of the papers in the suit with the knowledge of the party who signed it or of his agent, it shall not have been objected to or challenged as false in due time, in order that the party presenting it could have proved its legitimacy.

542, 544, 547, 559, 551, 965.

534). ART. 695. In general, the originals of private documents must be presented in order that they may have the value which is given them in this chapter; but the copies of such documents shall have the same value in the following cases:

1. When the copy shall have been made and authenticated by the Notary before the institution of the suit, by reason of the immediate absence of the person possessing the original, or other equally justifiable considerations, unless the party against whom said copy may be presented shall maintain that it is not a faithful one, and his reasons should at least permit of strong conjectures in favor of his assertion.

2. When the party against whom said copy is presented shall acknowledge it as genuine, either in an express manner or in the implied manner referred to in the preceding article, provided that said copy be not of a

document signed by a person other than that against whom it is produced, in which case the acknowledgment of the latter must be express.

535). ART. 696. Every person is obliged to acknowledge under oath before the Judge of competent jurisdiction, the I. O. U., promissory note or document which he may have signed in favor of another. He who by reason of not being able to write should have directed that another sign for him, is obliged to testify as to whether the document was drawn at his direction, whether he requested another to sign for him, and whether the contents of the document are true. In other cases, it shall be sufficient that he who is obliged to make the acknowledgment confess that the signature is his.

540.

536). ART. 697. The person in whose favor the promissory note, bill, etc., may have been drawn, or the person to whom he may have endorsed or assigned it, may request the acknowledgment thereof. The holder of a note payable to bearer, or one which does not state the person to whom it is to be paid, may also request the acknowledgment in court.

537). ART. 698. The Judge to whom application may be made for the acknowledgment of any of the documents mentioned, must summon the person who signed or ordered it signed, to acknowledge it under oath, fixing for the purpose the day and hour when he is to do so.

539.

538). ART. 699. The acknowledgment having been made, the Judge must order that the document, together with the statement, be delivered to the person who requested the acknowledgment, in order that he may avail himself of his right, if the document did not form part of the records of a suit.

539). ART. 700. When a person having been called upon by a Judge of competent jurisdiction and personally cited to acknowledge a document, or to testify upon the obligation the subject-matter of the document, should conceal himself or not appear in court on the day and at the hour which may have been set, not being prevented from so doing by any impediment which would suspend the terms; or if, appearing in court, he should refuse, either to take the oath or to testify acknowledging the document or not, or as to the obligation regarding which he may be questioned; or if he should endeavor to elude the questions by evasive, irrelevant, or senseless answers, the Judge shall consider him to have confessed that upon which he may have respectively been questioned, as to which the proper record shall be made, as if the express acknowledgment had been made.

530, 540.

540). ART. 701. The national judge of first instance of the residence of the person who signed or directed the signature of the document, or who shall in any other manner appear responsible for the value thereof, is of competent jurisdiction for the purposes of the preceding article.

541). ART. 702. A private document entailing an obligation, which has not been judicially acknowledged, has only the force of a summary testimony of witnesses.

448, 449, 542.

542). ART. 703. When the documents mentioned in the preceding article should be authorized by two witnesses, if the latter should testify in the ordinary form that they saw the person against whom the document is adduced, sign it, or that he requested them to sign it as witnesses, having seen at the time of so doing the signature of the party, the contents thereof shall be full proof.

543). ART. 704. The originals of the private documents and the correspondence in a suit must be attached to the record, if this should be possible. If certified copies thereof are to be made, they shall be exhibited to the Secretary of the cause, and the latter shall make a certified copy of what the persons interested or the Judge may indicate.

544). ART. 705. A private document of obligation, registered at the request of the person obligated, upon the register of public instruments, has the force of full proof, even though it should not be acknowledged by said person.

Art. 1 of Law 39 of 1890, and art. 36 of Law 57 of 1887.

## CHAPTER IX.

### *Provisions common to the two preceding Chapters.*

#### FOURTEENTH AMENDMENT.

*(Of Law 46 of 1876.)*

545). ART. 706. The instruments and the documents presented by the parties, which may have been embodied in the records, shall be considered as evidence adduced during the suit, without the necessity of reproduction nor reference during the probatory term.

19, 840, 841, 859, 860.

#### FIFTEENTH AMENDMENT.

*(Of Law 46 of 1876.)*

546). ART. 707. The superior or inferior courts of the Union, when in matters of their jurisdiction they may be obliged to pass upon the value of acts or contracts celebrated in the States, to the laws of which they

should have conformed, shall do so by applying such laws if they should be presented as evidence. In the absence of objection and proof against the acts and contracts referred to, their existence shall be established by the merit and nature of the instrument embodying them, if it should be presented.

370 subdivision 9.

547). ART. 708. Public or private documents drafted in accordance with the laws of the States, shall have probatory value assigned them in Chapters 7 and 8, title 2, book 2 of the Judicial Code, provided that no proof be adduced thereagainst of their falsity, nullity or the lack of some requisite or formality necessary for their validity or to make the obligation expressed therein binding. In the latter case, the probatory merit of the instrument or document shall be qualified in accordance with the provisions of the law of the respective State, if it should be presented as proof.

379 subdivision 9, 553.

548). ART. 709. When a party shall present two instruments or documents of the same class, which are in conflict with each other, both shall be rejected.

549). ART. 710. Instruments and documents which are torn, amended or in which words are erased and others put in their place, in the substantial part of their contents, shall not be considered as proof.

A case is excepted in which it may be proved that the instrument or the document was altered without the intervention or fault of the person interested, as if this should be so and it should not be possible to replace it, it must be considered as evidence if the contents thereof can be known.

522.

550). ART. 711. Public or private documents drawn in a foreign country, shall be considered as proofs according to the cases, if they be presented authenticated, as prescribed with regard to powers of attorney in article 337\* of this Code.

551). ART. 712. Whenever by reason of the signature or the legitimacy or effectiveness of a document having been denied, the party presenting it should request a comparison of handwriting, an order shall be made that the document be deposited in the office of the Superior or inferior court, its pages being rubricated and its condition certified to by the Secretary.

552). ART. 713. The comparison shall always be made with docu-

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\* Ordinal 104.

ments written or signed by the person whose handwriting or signature it is desired to establish.

553 to 558, 485.

553). ART. 714. If it should be necessary, the documents which are to serve for the purpose of comparison may be requested of any public archives or office.

Those in the possession of private individuals cannot be used without their consent, but if such documents should be the only ones in existence, their production shall be required, unless the possessor shall declare under oath, that they contain secret matters which it does not suit him to divulge.

555, 641.

554). ART. 715. If the denial or refusal to acknowledge should apply to one part of the document produced in court only, that part thereof which may have been acknowledged may also serve as a means of comparison.

555). ART. 716. When papers shall have been requested and obtained for the comparison which were on file in archives or other public depositaries, the Judge shall see, under his liability, that such papers be returned promptly in their original condition.

553.

556). ART. 717. In the absence or insufficiency of written papers with which to make the comparison, the Judge shall order that the person to whom the instrument which it is desired to compare is attributed, write what may be dictated to him by one of the experts to the extent of filling a page of twenty lines, and affix his signature at the foot of what he may have written.

557). ART. 718. The experts who are to make the comparison shall promise not to reveal to any person their report before it is presented to the Judge. When the latter shall deem it advisable, he shall order that the comparison and report be made in his presence with entire secrecy.

491, 505 second par., 507.

558). ART. 719. The evidence resulting from the comparison, is incomplete proof; but its force shall be more or less great according to the uniformity in the report of the experts, the reputation of the person whose handwriting or signature was denied, the magnitude or nature of the obligation, and other like circumstances.

382 and citations.

559). ART. 720. At any stage of the cause, up to the citation for judgment, the party against whom a document may have been presented in a suit, may charge its falsity, in order that it may not be considered in the judgment.

533, 562.

560). ART. 721. If the probatory term shall already have expired or is about to expire, an additional term not to exceed ten days may be granted, provided that the party shall swear that he did not before have knowledge of the falsity.

The cause shall be suspended until the issue charging the falsity may be decided; but if the decision should be against the party who brought the charge, he shall be adjudged, in addition to the costs, to the payment of a fine of from twenty to two hundred pesos, if his temerity should be manifest.

377, 878, 879.

561). ART. 722. If in order to prove the falsity the comparison of handwriting or of signatures should be requested, the proceedings shall be had as stated, and in this case as well as in any other case in which experts may have been appointed for the purpose of examining and reporting upon the genuineness of a document, all the data and means of examination and comparison which they may consider necessary, shall be placed at their disposal with the restriction established in article 714\* with respect to the documents in the possession of private individuals.

562). ART. 723. The Secretary shall rubricate the pages of the document challenged as false, immediately upon the falsity being charged, and the Judge shall take the precautions necessary to prevent a substitution.

559.

563). ART. 724. The decision rendered upon the issue of falsity, shall be understood as without prejudice to the criminal action and proceedings which may lie against the falsifier.

564). ART. 725. When the parties who may have presented in a suit or in any other manner, instruments or documents as evidence, should find it necessary to use the originals thereof in another suit or petition, they shall be returned to them, and an authentic copy shall be left in the process of which they form part, provided that the Judge shall not consider that they are also indispensable therein in the form in which they were presented. The request for the return thereof, shall be heard

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\* Ordinal 553.



and decided as an incidental issue, if the suit should not have been concluded. After the rendition of judgment in last instance, the request for the return may be presented only to the Judge of first instance.

In the event that the Judge should not find that the return of the document should take place, he shall order an authentic copy thereof issued, and shall direct that the Secretary certify to any portion of the original which the party may deem advisable.

565). ART. 726. If the purpose of the party were to cause the acknowledgment in another suit of a signature already acknowledged in the first, he may request a copy of the act of acknowledgment, together with that of the document.

The two preceding articles have been supplemented by the two following:

566). ART. 335 of Law 105 of 1890. Justices and Judges may decree, with the proper precautions, in order to prevent abuses, the removal and delivery of original documents, when the parties who presented them may so require. The request for return shall be heard and decided as an incidental issue, if the suit should not have been terminated. If it should have been closed, the other parties shall be heard before deciding upon the petition. They shall cause that the Secretaries leave a copy thereof at the cost of the petitioner, in the respective place of the record, and the necessary receipt, which shall be written immediately after the copy of the document. Upon the document, the removal of which is directed, there shall be copied the resolution which may be made, for which purpose the blank part which the document may have shall be used, even though the paper were not of the proper class. If an appeal be taken from the decision, the decision of the superior shall be copied.

567). ART. 336 of Law 105 of 1890. Documents establishing personal obligations which have been satisfied in full by reason of the suit, shall be detached when the party who presented them is under the obligation of returning them, or they shall be delivered to the debtors, if the latter should so request.

If the entire value of the document ordered returned shall not have been satisfied, the Judge, in the order directing the removal, shall make mention of the amount which may have been satisfied.

## CHAPTER X.

### *Ocular Inspection.*

568). ART. 727. The ocular inspection is the examination and investigation made by the Judge in person or through experts of the litigious thing, in order to be able to decide with sound judgment.

569). ART. 728. The ocular inspection may be requested as proof:

1. By the owner of an estate whose lands may be threatened by the overflow of a river, by reason of the waters naturally flowing thereon.
2. By the person injured or who might be injured by a work threatening to collapse.
3. By the person injured or who might be injured by a new work contiguous to his tenement.
4. By the person who may be caused loss, if thing exposed to corruption or to suffer deterioration, should not be sold.
5. By the person who would be prejudiced if the hanging fruits should not be gathered, and as to which he intends to bring a suit.
6. By the person desiring an examination of the damage which may have been caused him, and the value of the indemnity due him.
7. By those desirous of the retention of the waters which irrigate their lands, without increasing or decreasing the intake or outlet in the course of the waters.
8. By those disputing as to limits and boundarie of places or real property, or as to rural or urban servitudes; and
9. In all other cases in which an examination may be necessary to decide the object in controversy.

570). ART. 729. The inspection must also be made by the Judge *ex proprio motu*, whenever he shall deem it necessary, for the proper elucidation of the truth; and in such case it may be decreed at any stage of the cause, before final judgment.

The following article subrogates the preceding one, although not in an absolute manner, as the provision regarding the time when the inspection may be decreed, subsists.

571). ART. 81 of Law 105 of 1890. The ocular inspection must be made on the petition of a party, or *ex proprio motu* by the Judge or Court taking cognizance of the matter. If the inspection should be requested by the party within the probatory term, it shall be made by the person hearing the case, unless at the time of requesting the evidence, it be expressly stated that the inspection be made by all the justices composing the Chamber and who are to decide the controversy.

If the ocular inspection should be decreed on his own motion by the Judge or court, taking cognizance of the cause, whenever it shall be deemed necessary for the proper elucidation of the truth, the Justices who are to render judgment shall attend.

572). ART. 730. In every case of ocular inspection, the Judge, in granting or ordering it, shall fix the day and hour when it is to be made.

573.) ART. 731. The inspecting Judge shall appoint two witnesses with whom he must associate himself in the act, if experts should not be necessary; but when the case requires professional knowledge, experts shall be appointed according to the terms prescribed in Chapter VI of this Title, it being necessary that the parties and other persons interested

be first cited, excepting the cases in which express provisions to the contrary are specified in this Code.

The parties attending the proceeding may verbally make such remarks to the Judge as they may consider proper, and they shall be inserted in the minute, on the petition of the party, if they should be pertinent.

505.

574). ART. 732. When the Judge shall be in the place where the ocular inspection is to be made, with the attendance of the Secretary and of the witnesses or experts, in a proper case, he shall hear the persons interested and shall cause the experts to examine the thing and express their opinion with the reasons therefor, which opinion must be approved by the Judge.

A record shall be made of the entire proceeding, which shall be signed by the parties present, which shall form a more or less complete proof, according to the nature of the contents thereof and the character of the assertions which the experts or witnesses who may have taken part in the proceedings may have made.

575). ART. 733. With regard to the acts which may have taken place in the presence of the Judge, the Secretary and the witnesses, the record of the inspection constitutes full proof, as does that which is before the Judge in the papers in the case of which he takes cognizance.

576). ART. 734. The record of the examination having been made, the Judge shall order that it be attached to the records if such examination should have been made to settle a doubt, or that it be delivered to the person who requested it, in order that he may make use of his right. But when the ocular inspection should involve a new work or one that threatens to collapse, the provisions of Chapters VII and VIII, Title XI of this Book, shall be observed.

## CHAPTER XI.

### *Special proofs in Commercial Affairs.*

377). ART. 735. In addition to the evidence admissible in civil affairs, in general, the following is also admissible in commercial affairs:

1. The commercial books kept in accordance with the law governing the matter.
2. The invoices or memoranda accepted or cancelled by the persons interested.
3. The usual cards or statements of accounts; and
4. Custom according to the Code of Commerce.

578). ART. 736. Commercial books acknowledged by the respective merchant, with the legal formalities, prevail against him; but the oppo-

site party producing them as evidence, cannot accept the favorable portions and reject what may be adverse.

579). ART. 737. Invoices or memoranda are governed by the rules of private documents.

\* 530 *et seq.*

580). ART. 738. Correlative cards agreeing with each other, are evidence between the persons who customarily establish in this manner what they may issue or receive on credit.

581). ART. 739. Commercial custom must be proved by any of the following means:

1. By three authentic decisions pronounced in accordance with the custom which it is desired to establish; and

2. By the unanimous statement of seven merchants presented by the party pleading the custom.

582). ART. 740. As a general rule, the entries made by exchange brokers or agents shall have the value of the testimony of a witness; but when the party against whom they may appear should not produce sufficient evidence to refute them, they shall have the force of complete proof.

### TITLE III.

#### Incidental Issues in Civil Action.

##### CHAPTER I.

583). ART. 741. After the answer to the complaint, until the citation for judgment, the parties may raise the interlocutory or incidental issues which they may desire.

383, 559, 560, 590.

##### SIXTEENTH AMENDMENT.

(*Of Law 46 of 1876.*)

584). ART. 742. All incidental issues shall be heard and decided in a separate record, being referred to the opposite parties for forty-eight hours, and evidence thereon being taken for nine days when there are matters to be proved; but when the issue shall refer to points already decided in other incidental issues, the Judge shall declare it inadmissible within forty-eight hours, and if an appeal should be taken from this decision, it shall not be allowed excepting in a devolutive effect.

318, 364.

585). ART. 743. Answer having been made to the reference, when the point is one of pure law, or the time having expired for the taking of evidence upon an incidental issue, the Judge shall decide it within three days.

586). ART. 744. The decisions rendered by the National judges in incidental issues, may be appealed from to the Federal Supreme Court, in both effects, and a copy of the resolution which it may render shall be added to the principal record in order that it may have its effects; if the appeal shall not be interposed, a copy of the decision of the Judge shall be attached thereto.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

587). ART. 82 of Law 105 of 1890. The decision upon an incidental issue is appealable only in a devolutive effect, and if by said decision the proceedings had, or a part thereof, should be invalidated, mention shall be made, in the record of the principal suit, of the decision containing such provision.

780.

588). ART. 745. The appeal must be interposed immediately upon service of notice or within the next twenty-four hours. Upon being allowed, the papers relating to the incidental issue shall be sent to the Court, a copy of the decision of the Judge being retained. If the Court should deem another part of the record necessary before deciding, it may call for such part.

766, 769.

589). ART. 746. The court shall render decision in these cases as in appeals from interlocutory decisions.

783 to 787.

590). ART. 747. The introduction and the hearing and determination of an incidental issue does not interrupt any of the terms of the suit, unless the result thereof may have an influence upon the decision, in which event the term allowed the Judge for rendering final judgment shall not begin to be counted until the incidental issue shall have been decided.

583.

## CHAPTER II.

### *Impediments and Recusations.*

591). ART. 748. No justice or judge can take cognizance of a matter which he may be prevented from doing according to the following article, unless it shall appear that the jurisdiction has been prorogued to him in an express or implied manner.

598, 599, 600, 601.

592). ART. 749.\* The following are causes of impediment:

1. Relationship by consanguinity, within the fourth degree, between the Judge and any of the parties.

2. Relationship by affinity, within the second degree, between the same.

3. Intimate friendship, or grave enmity, between the Judge and any of the parties.

4. An interest in the suit on the part of the Judge or any of his relatives in the degrees mentioned in the first two paragraphs.

5. The fact of the superior Judge being a relative, within the third degree of consanguinity, of the inferior judge whose decisions the former may have to review by virtue of any remedy.

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\* Amended: Ordinal 593.

6. The fact of the Superior Judge being a relative, within the second degree of affinity, of the inferior judge situated as in the preceding number.

7. The fact of the Judge, his wife or his son, having adopted or having been adopted by any of the parties.

8. The fact of the Judge being a partner or participant in anything with any of the parties.

9. The fact of the superior judge having taken cognizance at first instance of the same suit, and rendered the decision which he may be obliged to review in the second instance.

10. If the Judge live in the house of any of the parties, or eat at the table and at the expense of said party.

11. If the Judge should be the actual tutor or curator of any of the parties, or an administrator having an interest in the suit, or if the parents, children or brothers of the Judge should so be.

12. If the Judge or his parents, or his wife, or any of his children should be the creditor or debtor of any of the parties.

620.

13. If the Judge, his wife, either of his parents or any of his children, should have received donations or valuable services from any of the parties, after the institution of the suit; if they should have been appointed the heirs of any of the parties or have left them anything in a testament.

14. If any of the parties, his spouse, or any of his children should be dependent upon the Judge.

15. If the Judge, his wife, either of his parents or of his children, shall have suffered offenses at the hands of any of the parties, partaking of the nature of a crime, and which were made the subject of proceedings and a verdict of conviction rendered, unless three years shall have elapsed since such sentence.

16. If any of the parties be in civil litigation with the Judge, his wife, his ascendants, descendants or brothers, or should have been in litigation without a compromise having been reached, within the six months next preceding the day the impediment is adduced.

17. If the Judge, his wife, his parents, children or brothers, shall have a suit pending of which any of the parties may be taking cognizance as Judge; and

18. If the Judge shall have favored any of the parties in the subject-matter of the suit, or in the suit itself as attorney or counsel (*patrono*).

601, 602.

No. 3 of the preceding article has been amended by the following article: 593). ART. 84 of Law 105 of 1890. Intimate friendship between the

Judge and any of the parties, or enmity between the Judge and the counsel or attorneys of the parties, is not a cause of impediment.

594.

594). ART. 750. What is said of the parties with regard to impediment and recusations, is understood also to apply to their attorneys and defenders of property.

106, 132, 593. Law 169 of 1896, art. 14.

595). ART. 751. When the recusation is based on any cause which refers to one of the parties only, the right to recuse, excepting in cases of enmity or a pending suit, pertains only to the party opposed to that to which the cause refers.

The following article is supplemental:

596). ART. 83 of Law 105 of 1890. The Justice or Judge recused in an incidental issue of the suit, is prevented from taking cognizance until the end of said suit, without the necessity of a new recusation, as long as the impediment shall exist.

597). ART. 752.\* The Justice or Judge in whom any of the impediments mentioned may be present, shall inform the party interested in knowing thereof by means of a decision (*auto*) and should he not do so within two days, knowing thereof, or if even after having done so he should continue taking cognizance of the matter, without the jurisdiction having been prorogued to him, he shall incur the penalty established in article 432 of the Penal Code.

592, 601, 603, 607.

598). ART. 753. If the party directly interested in the removal of the Judge shall state at the time of service of notice, or within twenty-four hours thereafter, that he does not agree to said Judge continuing to take cognizance of the cause, the Judge shall by such act be separated therefrom, and the matter shall pass to the official called upon to substitute him, provided that the opposing party shall not have objected, as he may do, basing his opposition upon the inexactness of the facts which constitute the impediment pleaded, or upon such impediment not being any of those mentioned in article 749.† If the party directly interested in the removal of the Judge, or Justice prevented, shall state in the notice that he agrees to said justice or judge taking cognizance of the matter, or should keep silence when said service is made and for twenty-four hours

\* Amended by ordinal No. 601. Art. 432 of the Penal Code which was in force and to which reference is made herein, is art. 543 of the Penal Code of Colombia, now in force.

† Ordinal 592.



thereafter, the justice or judge prevented shall continue taking cognizance by virtue of the prorogation of the jurisdiction.

600, 608, 609, 610.

The following articles are amendatory:

599). ART. 32 of Law 100 of 1892. The causes of impediment mentioned in Nos. 1, 2 and 4, of article 749 of the Judicial Code, shall not be understood to be cured by the silence of the party, in the term indicated in article 753 of the said Code. Such causes can be cured only by the express will of the party having such right.\*

600). ART. 33 of Law 100 of 1892. Impediments which consist in the Judge or Justice, or his wife, parents or children, being parties to the suit, can in no case be cured.

598.

601). ART. 85 of Law 105 of 1890. Justices and Judges shall not inform the parties of the impediments which follow, established by the Judicial Code:

1. That treated of in No. 12, with regard to the parents, wife or children of the Judge, if the fact which serves as a basis for the impediment shall have taken place after the initiation of the suit and without the intervention of the person of the Judge, and provided that the latter shall already have been exercising the functions of the judicature when the act took place.

2. Impediment No. 13, in the part relating to the institution of heir or legatee of any of the persons designated in the said number, when such institution shall appear in the testament of a person who has not died yet, or if, even if he should have died, the inheritance or legacy has been or is repudiated.

3. Impediment No. 16, when the suit referred to therein shall have been instituted after the suit relating to the impediment. Nevertheless, if the Judge sued shall have assented to the facts which are the grounds of the complaint, or if, the action being an executory one, the writ of execution shall have become final (executed?), the Judge must make the impediment known.

597, 602, 607.

602). ART. 86 of Law 105 of 1890. The parties cannot recuse the justices or judges for the impediments referred to in the preceding article when the circumstances established in the said article shall be attendant.

603). ART. 754. Even though the Judge or Justice shall not have made known any cause of impediment, the party directly interested in his

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\* Art. 14 of Law 169 of 1896, is amendatory.

removal may recuse him, provided any of said causes shall be attendant, and provided he do so not later than twenty-four hours after the citation for final judgment shall have issued.

593, 597, 601, 602.

604). ART. 755. The plea of recusation must be in writing, and must be conceived in terms of moderation and not offensive to the person recused, it being necessary that the cause of impediment be expressed very clearly and individually. It shall be addressed to the Court or Judge who may have to take cognizance of the issue, according to the following article.

607, 611.

605). ART. 756. The incidental issue upon the impediment or recusation shall be taken cognizance of in the Federal Supreme Court by the Justices not impeded and not recused, and in the courts of first instance, by the Judge who may have to take cognizance of the matter, if the existence of the cause alleged should be declared. If the court of first instance should be a plural one, the impediment of recusation of one of the Judges or Justices thereof shall be taken cognizance of by the Judge or judges to whom the cognizance of the principal matter may fall, in the event that the Justice or Judge prevented should be separated.

Supplemented by the following article:

606). ART. 2 of Law 72 of 1890. In matters of which the Superior District Courts take cognizance in "Sala de Acuerdo," the Justices not prevented or recused shall take cognizance of the impediment or recusation of a justice.

In those which are decided in a Chamber of two or more Justices, the impediment or recusation of one of them shall be heard and determined by the others composing the Chamber.

In those decided by a single Justice, the one following him in turn shall pass upon the impediment or recusation.

When a Tribunal shall be divided into two chambers, and in either of them justices who are to decide upon the impediments or recusations should be lacking, the justice or justices lacking shall be called from the other chamber, being selected by lot.

In the absence of justices, co-judges shall be drawn.

607). ART. 757. The Justices or Judges to whom the cognizance of the incident of impediment or recusation falls are not impeded nor subject to recusation therein.

597, 601.

608). ART. 758. The impediment having been made known by the Judge or Justice in whom it may be present, and the separation of the latter having been assented to by the person interested therein, without opposition from the other party, the Judge or the Justices to whom the cognizance of the incident may fall shall declare the Justice or Judge impeded to be separated, and shall assume the cognizance of the principal matter if a Judge of First Instance were involved; if a Justice of the Court, a day and hour shall be set within the next five for the selection by lot of the Co-judge with whom the Court is to be completed for continuation of the cognizance of the principal matter, after the Co-judge shall have entered upon his duties and the parties in formed thereof.

597, 601, 607, 609, 610.

Supplemented by the following:

609). ART. 87 of Law 105 of 1890. The Judges and Justices whose duty it may be to take cognizance of the incident referred to in articles 758 and 760\* of the Judicial Code, before declaring the respective Justice or Judge to be separated, shall pass upon the legality of the impediment itself, and shall take into consideration whether, in accordance with the law, the impediment should have been made known by the Judge or pleaded by the parties.

610). ART. 759. If the party opposing that interested in the separation of the Justice or Judge impeded should object thereto, pleading that the impediment alleged is not true, the incident shall be transmitted to the Judge or to the Justices who are to take cognizance thereof, and the latter or the former shall receive evidence upon the incident for the common and period of eight days, not subject to extension, upon the expiration of which it shall be decided within the next three days whether the impediment is or is not established, and in the former case the additional proceedings provided for by the preceding article when the Justice or Judge impeded is declared separated, shall be had. In the latter case, that is, when it is decided that the impediment has not been proved the incident shall be returned to the Justice or Judge who has made known his impediment, in order that he may continue taking cognizance of the principal matter.

611). ART. 760. In case of recusation, the mode of procedure shall be as follows: after a consideration of the document containing it, the Justices or the Judge who are to hear the incident, shall immediately call upon the Justice or Judge recused for a report as to the truth of the statements upon which the recusation is based, and upon the report being made, which must be done within forty-eight hours, if the person recused should admit the truth of the facts mentioned, he shall be declared re-

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\* Ordinals 608 and 611.

moved from the cognizance of the principal matter; subsequent proceedings shall be in accordance with article 758.

If the Magistrate or Judge recused should not admit the truth of the facts upon which the recusation is based, or if the party opposed to the recusing one should deny the truth of such facts, the provisions of article 759 regarding the denial of the truth of the impediment by the party opposing that interested in the removal of the Justice or Judge who pleaded it, shall be observed.

612, 609.

612). ART. 761. If the recusation should not be based upon any of the causes mentioned in article 749, it shall be declared inadmissible merely upon an examination of the document containing it.

601, 602.

613). ART. 762. The decisions rendered by the Judges of first instance in incidents upon an impediment or recusation, may be appealed from to the Federal Supreme Court by the party who believes himself injured, but the appeal shall be granted only in a devolutive effect.

783 to 787.

614). ART. 763. The Secretary of the Federal Supreme Court and those of the Courts of First Instance, may be recused for the same causes as Justices and Judges, and, furthermore, by reason of notable delay in the discharge of his functions.

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615). ART. 764. The proceedings for the recusation of a Secretary shall be heard by the Justice taking cognizance of the cause. The person recused shall take no part in the proceedings, but the person who would replace him in the event of the recusation being allowed, shall act.

616). ART. 5 of Law 72 of 1890. The Justice taking cognizance of the cause, passes upon the impediment or recusation of the Secretary of the Court.

617). ART. 765. The mode of procedure in the recusation of a Secretary shall be similar to that established for the recusation of Justices and Judges.

597, 598, 604, 608 to 611.

618). ART. 766. The provisions of this chapter regarding the recusation and impediment of Justices and Judges is applicable to the Co-Judges of the Court and to the substitutes of the Judges.

619). ART. 767. The Justices of the Federal Supreme Court, when they take cognizance in "Sala de acuerdo" of matters not of a contentious character, and Judges of First Instance, when they act in matters in which there is no opposition by a party, may also be recused for the causes mentioned in article 749, the causes regarding the person being understood as referring to those who may be individually interested in the matter.

The right to recuse in these cases continues until the Court or the Judge shall have rendered the final decision in the matter in question.

620). ART. 768. With regard to the Nation, a corporation or any other juridical person, the party opposing any of such entities cannot plead as a cause of recusation, the 12th cause of article 749, nor those which being personal, can refer only to the individuals who represent or compose the moral or juridical person.

621). ART. 769. In any case of recusation, the recusing party shall be adjudged to pay the costs if he should have failed to prove the cause pleaded; and the recused person, when the cause is proved and he should have denied the truth of the facts upon which it was based.

622). ART. 770. The recusing party failing to establish the causes of the recusation pleaded, shall also be fined from twenty to fifty pesos. But if the cause pleaded should be a criminal one, and it should not have been established, the fine shall not be less than fifty pesos.

### CHAPTER III.

#### *Competencies.*

623). ART. 771. Competency is the question arising between two Judges or Tribunals as to which of the two must take cognizance of a certain judicial matter. It may be affirmative or negative.

It is affirmative, when each of the Judges between whom the competency has arisen, maintains that he and not the other should take cognizance of the matter in question.

It is negative, when each of the Judges between whom it arises, claims that not he but the other Judge should take cognizance of the matter.

624). ART. 772. There can be no question of jurisdiction between a Judge or Tribunal and another directly subordinate thereto; hence there can never be such a question between a national Judge or Court of first instance, and the Federal Supreme Court.

625). ART. 773. When a Judge shall claim that the cognizance of a matter pertains to him, to the exclusion of another who has begun to take cognizance thereof, he shall send him a communication stating the grounds upon which he bases his claim, and informing him of the

competency, in the event that he should refuse to cease taking cognizance of said suit.

626). ART. 774. The Judge challenged without hearing any party whatsoever, and by a mere inspection of the process and the reasons contained in the communication received, shall decide within three days whether he withdraws, or accepts the competency.

If he withdraw, he shall so state by means of a communication to the Judge who addressed him, forwarding to him the principal record, after a citation of the parties.

If the Judge challenged should accept the competency, he shall so inform the challenging Judge, with a written statement of his reasons for accepting it.

Upon the acceptance of the competency, the cause of the suit is stayed, until such competency shall cease or be decided.

327 first par., subdivision 2, 648.

627). ART. 775. If the Judge who raised the competency shall withdraw by virtue of the reasons adduced by the Judge challenged, he shall so inform the latter, forwarding to him, after the citation of the parties, the proceedings had by him in the principal matter.

628). ART. 776. If the Judge who raised the competency should not withdraw, he shall so state to the other Judge expressing the reasons for his insistence; and he shall transmit to the superior who is to pass upon the competency, the proceedings had with regard to the latter, and the principal record, if he should have it in his possession. The Judge challenged shall do likewise.

629). ART. 777. The papers having been received from both parties by the Superior Tribunal, and after having heard the Attorney General (*Procurador General*) of the Union, who shall render his opinion not later than the third day thereafter, the Tribunal shall decide the competency within three days, counted from that upon which the Attorney General returns the papers.

630). ART. 778. Every competency shall be decided merely in view of the proceedings transmitted by the Judges between whom it arose, without further proceedings than those established in the preceding article.

631). ART. 779. The decision having been made known to the Attorney General, it shall at once be communicated to the Judges between whom the competency was disputed, the record of the principal suit being transmitted to that Judge who, according to the decision, is to take cognizance thereof.

632). ART. 780. When a Judge who is hearing a suit should be of the opinion that he is not competent, stating in a ruling all the legal reasons he has for believing that it pertains to another, shall transmit it to him,

after the citation of the parties, declaring at the same time that if such Judge does not believe himself competent, he raise the negative competency.

633). ART. 781. The Judge receiving the suit, if he should agree that the matter pertains to him, shall assume the cognizance thereof and shall so advise the Judge who instituted the competency. Should he not agree, he shall accept the competency within three days. And as to the rest, until the decision and communication to the respective Judges, the provisions of the preceding articles regarding affirmative competencies, shall be observed.

634). ART. 782. When the Judge to whom a competency is communicated, yields, the party not satisfied with such ruling may appeal therefrom within the ordinary term, and the appeal must be allowed in both effects. But the Judge who has yielded is not the one who is to grant it, if the competency be affirmative, but the Judge to whom the matter is transferred, and the Federal Supreme Court shall take cognizance of the appeal.

783 to 787.

635). ART. 783. When the Judge to whom an affirmative competency is communicated, is commissioned, he shall so advise the Judge instituting it, without accepting or yielding, and shall make a report transmitting the original communication from the Judge challenging to the commissioning Judge, without suspending thereby the course of his commission.

636.) ART. 784. Between Judges and officials, who, though not judges, are vested with jurisdiction to take cognizance of some judicial matters, competencies may be raised with regard to said matters.

1082. Law 169 of 1896, article 27.

#### CHAPTER IV.

##### *Consolidation of Actions (autos).*

637). ART. 785. The consolidation of record is the union of two or more processes for the purpose of hearing and deciding in a single action the controversies to which they refer.

638). ART. 786. The consolidation of records may be made only at the instance of a legitimate party and for any of the following causes:

1. When the decision to be rendered in one of the suits whose consolidation is requested, may produce an exception of *res judicata* in the other.

2. When in a court of competent jurisdiction there shall be a suit pending upon the same thing which may be the object of that instituted

subsequently, in which case the second Judge shall be obliged to cease his proceedings and the Judge first having taken cognizance, shall continue.

3. When an individual who shall have a number of causes pending shall have bankruptcy proceedings instituted against him, and in such case the other causes must be consolidated with the universal insolvency proceedings, if the debtor or any of the creditors should so request.

4. When testamentary or intestate proceedings are begun, which, being universal also, attract or call and with which must be consolidated, if a legitimate party should so request, all the partial suits which may be pending against the hereditary assets.

5. When if the suits should be continued separately, the unity of the causes would be divided.

460.

639). ART. 787. The unity of a cause is understood to be divided, for the purposes of the provision contained in the last paragraph of the preceding article.

1. When the litigants are the same, the action the same and the thing in litigation the same.

2. When the actions are different, but the thing and the litigants are the same.

3. When the things are different, but the action and the litigants are the same.

4. When the actions arise from the same cause, even though exercised against a number, and consequently, there should be a diversity of persons.

1472.

5. When the action and the things are the same, but the persons different, as in proceedings for demarcation, partition of a thing held in common, and in other so-called double actions,\* and

6. When the proceedings are considered generic in one case and specific in the other, as the latter cannot be divided.\*

640). ART. 788. Even though the unity of the cause should be divided, the actions must not be consolidated: 1. When it shall not be requested by any of the parties, as the Judge cannot order it *ex proprio motu*; and 2. When the Judge does not have full jurisdiction to take cognizance of all the consolidated actions.

638 first par., 655.

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\* There are no actions which can be considered of a generic or specific character. But there may be an action involving a generic thing, and one involving a specific thing. (*Angarila*.)



641. ART. 789. With the exception of the cases of consolidation mentioned, no Judge or Court can retain the cognizance of a cause pending in another court; nor can he call for proceedings pending in another court not even for the purpose of examining them, excepting in the cases expressly determined by the law.

588, 642, 647, 780 second par., 794, 796, 1223.

642). ART. 790. The parties shall not be permitted to introduce in support of their intention, proceedings which should be filed, or which may be pending in other courts, as they must either request their consolidation in cases in which it is permitted or certified copies of the documents which they wish to introduce as evidence.

643). ART. 791. The consolidation must be requested of the Judge who is to take cognizance of the causes joined, stating the reasons for the consolidation of the actions; this petition may be made at any stage of the cause.

658.

644). ART. 792. If one and the same Judge takes cognizance of the actions the consolidation of which is requested, he shall order that the petition be referred for six days to all those who may be parties to said actions.

645). ART. 793. During said term the parties may support or object to the consolidation in writing, stating the reasons for their action; but they cannot remove the records from the office of the Secretary, but must examine them there.

646). ART. 794. The term of six days having expired, the Judge or Tribunal, within the next three days, shall decide the incident granting or denying the consolidation; such decisions if made by Judges of First Instance, may be appealed from to the Federal Supreme Court.

647). ART. 795. If the actions the consolidation of which is requested are being prosecuted in different Courts, and the Judge of whom it is requested should find that it is based upon a legal cause, he shall send a communication to the Judge taking cognizance of the other action in order that he may send him the process; upon the receipt of the latter, the proceedings shall conform to the provisions of the three preceding articles.

648.

648). ART. 796. The Judge of whom the process of which he is taking cognizance is requested, must transmit it at once, after the citation of the parties to the suit, consequently suspending the course of the cause and likewise, the jurisdiction of the Judge therein, until the process is returned to him by reason of the consolidation not having been proper.

649). ART. 797. When a consolidation shall be denied in which for the purpose of hearing and determining the incident it should have been necessary to call for records of one or more courts, in addition to the costs, the person who requested it shall be adjudged to pay a compensation ranging from fifty to one hundred pesos in favor of the parties who may have been prejudiced.

647.

650). ART. 798. If the proceedings are pending before two Judges of which one is of higher category than the other, and both request of each other the transmission, the Judge of the lower category is obliged to send the proceedings to the one of higher category.

651). ART. 799. In view simply of the petition for consolidation, and without any proceeding, the Judge may deny it if he see that it is not based upon a legal cause.

This ruling may be appealed from, but only in a devolutive effect.

652). ART. 800. In every case of consolidation the course of the suit nearest its termination shall be stayed, until the other shall be at the same stage. Exception is made of the consolidations with universal proceedings, to whose procedure those consolidated therewith shall at once conform.

656, 659, 1123.

653). ART. 801. The effects of the consolidation are: That the acts consolidated be prosecuted in a single proceeding, and be terminated by a single decision, and that the partial jurisdiction of the Judges in each of the causes of which they were taking cognizance cease.

659.

The following articles are supplemental:

654). ART. 88 of law 105 of 1890. In addition to the causes of consolidation mentioned in article 786 \* of the Code the following are such also:

1. When two or more executions are being prosecuted against the same property, unless by virtue of the desistance of one or more of the execution creditors to the right to recover from the value of said property, the consolidation should not be necessary.

2. When an executory action and an intervention in another execution take place simultaneously; or two or more interventions in different actions, for the enforcement of the same right.

1134, 1136.

655). ART. 89 of Law 105 of 1890. When two or more executions are

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\* Ordinal 638.

levied on the same property, the consolidation shall be decreed *ex proprio motu* or on the petition of a party; it shall be sufficient that there be authentic evidence of the fact.

638 first par., 640, 656.

656). ART. 90 of Law 105 of 1890. Notice of the order of consolidation shall be served upon all the parties to the suits the consolidation of which is in question, and, in a necessary case, the letters rogatory and communications which may be necessary shall be issued.

657). ART. 91 of Law 105 of 1890. Any execution creditor may object to the consolidation of the execution desired by him, renouncing for this purpose the right to recover from the value of the property levied on at the same time by virtue of one or more other executions.

654 subdivision 1.

658). ART. 92 of Law 105 of 1890. The court competent to decree the consolidation in the two cases mentioned, is that in which the attachment of the property shall have been first decreed.

643.

659). ART. 93 of Law 105 of 1890. The consolidation having taken place, the executory action to which, according to the preceding article, the other actions have been consolidated, continues its legal course, which actions shall have the character of suits in intervention in the executory action referred to.

653.

660). ART. 94 of Law 105 of 1890. The preceding provisions are not an obstacle to the Judge who takes cognizance of all the suits consolidated, advancing each execution separately with regard to the property which the respective creditor wishes to levy on exclusively, for which purpose, on the petition of the party, a copy shall be made of what may be proper, and a separate record made up.

## CHAPTER V.

### *Searches.*

661). ART. 802. The Justices and Judges of the Nation may search the houses and estates situated within the same, or enter thereon even against the will of those who inhabit or occupy them, in the following cases:

1. When there should be within the house or estate some person who is to be cited or notified personally of some judicial order or decision.

2. When within the house or estate is situated property to be sequestered, appraised or exhibited in court.

3. When the house or estate itself is to be sequestered or appraised in a suit.

4. When, in accordance with the law, an ocular inspection must be made as evidence, either of the house or estate searched or the things existing therein.

663, 669.

662). ART. 803. The Justices and the Judges taking cognizance of the causes in which the necessity for the search arises, are competent to decree such search, or it may be decreed by the Judges commissioned by the former to execute any of the measures mentioned in the preceding article.

663). ART. 804. Whenever one of the first cases of the said article is involved, the search must be expressly decreed; but if either of the last two should be involved, the order directing the sequestration, the appraisal or the ocular inspection, impliedly contains the order to search if necessary.

664.

664). ART. 805. When it is necessary that the search be expressly decreed, it shall be necessary that it be requested by a legitimate party and that it be well known or that the person interested and two witnesses swear, that within the house or estate can be found the person, or the things sought.

665). ART. 806. In order to conduct the search in any of the cases of article 802, the Justice or Judge who is to make it, must go accompanied by his Secretary, the persons interested in the suit being also permitted to attend, and two witnesses if deemed advisable; the Judge or Justice shall call at the door of the house or estate, and shall inform the owner or principal person in charge thereof, who he is and the purpose of his visit. If within five minutes no answer should be made or an entrance should not be permitted, he shall make another intimation, informing the owner or the person in charge of the house or estate of the liability he incurs through his refusal; and if four minutes more should pass without entrance being allowed, he shall proceed to the search availing himself of force if necessary.

666). ART. 807. If the house should be closed, and no one should make answer to the call, upon the expiration of seven minutes an entrance shall be forced and the search made.

667). ART. 808. The result of every search shall be embodied in a record which shall be signed by the Justice or the Judge, his Secretary and the witnesses who may have attended.

668). ART. 809. When it is desired to search an unoccupied field, as soon as the Justice or Judge shall arrive at any of its boundaries, he shall make the call prescribed aloud, and upon the expiration of seven minutes shall proceed with the search.

669). ART. 810. Every judicial search must be made after five A. M. and before six P. M., but if it be feared that the effects to be sequestered, appraised or exhibited may be removed, the Justice or Judge shall apply to the respective Chief of Police in order that, during the night time, guards may be placed thereover to prevent the removal.

670). ART. 811. The judicial search shall be conducted in spite of any special jurisdiction (*fuero*) or privilege, with the exception of that enjoyed by diplomatic agents in accordance with the principles of International law and the treaties and laws of the Union.

## CHAPTER VI.

### *Desistance.*

671). ART. 812. Any person who shall have interposed an appeal or instituted a suit, may desist therefrom expressly or impliedly.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

672). ART. 95 of Law 105 of 1890. Any person who shall have interposed an appeal, or instituted a suit, may desist therefrom expressly or impliedly. A desistance from an appeal shall be made before the same Judge who may have granted it, if the record shall not have been sent to the superior court, or before the latter if it shall already have been received by the same. The desistance from a suit shall be made before the Judge or Tribunal who may be taking cognizance of the *main issue*.

683.

673). ART. 813. In order that an express desistance may be valid, it is necessary that it be made voluntarily and by a capable person, and by means of a petition which the person desisting shall deliver personally to the respective Judge or Justice before his Secretary.

674). ART. 814. Every express desistance must be simple and without any condition. If conditional, the consent of the co-litigant shall be necessary to admit it, a consent which must be expressed in the same terms as the desistance.

679.

675). ART. 815. A desistance from the suit is not admissible: 1. In the causes in which persons under age, the insane, demented or other

persons under tutorship or curatorship, are parties, on the part of such persons, even though the desistance be made by their tutors; and 2. In suits through attorneys in fact when the latter are not specially authorized to desist.

303, second par.

676). ART. 816. The Representative of the Nation cannot desist from any suit, excepting in the cases prescribed in article 192.\*

305. ART. 11 of Law 169 of 1896.

677). ART. 817. The desistance from a suit replaces things in the state in which they were before it was interposed; and it cannot again be instituted by the person desisting, nor by his representatives against the same person, nor against the representatives of the latter, reserving the express agreements made at the time of desisting.

681.

The following article is supplemental:

678). ART. 96 of Law 105 of 1890. When during the course of an action the principal suit is desisted from, the demand in reconvention which may have been instituted shall follow its course before the Judge who may be hearing it, whatever be the amount involved.

861, 863, 683.

679). ART. 818. The simple desistance on the part of the defendant, renders him liable in accordance with the complaint.

674.

680). ART. 819. Desistance from an appeal produces the effect of making final the decision or ruling appealed from.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

681). ART. 97 of Law 105 of 1890. Desistance from an appeal produces the effect of making final the ruling or decision appealed from, when the opposite party should not have appealed from the same ruling or decision.

682). ART. 820. The desistance shall prejudice only the person making it, and said person shall pay the costs of the suit or of the appeal

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\* Art. 192 cited, has been repealed as it formed part of Book I of the Judicial Code; a Book which was repealed by article 230, ordinal No. 294, of the present Book I. Ordinal No. 243, of Book I, in force, subrogates art. 192 of the Book repealed.

which he may have abandoned, if there should not have been a special agreement between the parties.

1145.

683). ART. 821. An implied desistance takes place only when the plaintiff or appellant actually abandons the suit, and the preceding provisions regarding a simple and express desistance apply to him.

It shall be understood that the plaintiff abandons the suit in the case provided for in article 489.\*

303, 319, 320, 677, 684, 740, 782.

684). ART. 822. The abandonment and the desistance presumed from the same shall be declared by the Judge on the petition of the opposing party, after a hearing and determination of the incident, whether the plaintiff make answer or not to the reference made to him.

If the latter should be represented by an attorney, who does not have the express power to desist from the suit, the incident referred to shall be heard and decided with the intervention of the party in person if he should be present in the place of the suit.

683.

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\* This is ordinal 296, which was expressly repealed by art. 338 of Law 105 of 1890.

## TITLE IV.

## FIRST AND LAST CHAPTER.

*Decisions and Judgments.*

685). ART. 823. The words *auto* and *sentencia* decision and judgment have the same meaning.

686). ART. 824. A definitive judgment is that rendered upon the controversy which has been the subject of the suit, that is on the main issue.

687). ART. 825. An interlocutory decree or judgment is that which decides a point or question incidental to the suit.

688). ART. 826. An order of mere practice is that whose purpose is to direct the procedure or the course of the suit.

689). ART. 827. A final judgment (*sentencia ejecutoriada*) is that from which no appeal lies or, regarding which a consultation is not necessary; and that which, even though appealable, shall not have been appealed from within the legal term.

692, 693, 727 second par. Law 169 of 1896, article 28, which definitely subrogates this article.

Subrogated by the following article. As the subrogation is complete this article has been considered as impliedly repealed, for which reason an identical article was introduced in Law 169 of 1896, which replaces it, viz., art. 28, just cited.

690). ART. 238 of law 153 of 1887. Expressly repealed by article 338 of Law 105 of 1890, and subrogated by article 28 of Law 169 of 1896, cited.

691). ART. 828. Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

692). ART. 98 of Law 105 of 1890. In the last of the cases of article 827 of the Judicial Code, the judgment becomes final by the mere lapse of time; but it is necessary that the party interested request that the finality be declared by the respective superior Judge or Tribunal, who shall decree it, with a citation of the opposing party, the latter being permitted to plead that the time has not expired, or that it has been suspended for a legal cause.\*

693). ART. 829. A judgment which must be consulted, never becomes final until it is consulted. Consequently, the decision upon that consulted, is the one which has the force of a definitive judgment.

886.

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\* Article 827 referred to herein, is ordinal art. 689, which was subrogated by ordinal art. 690, which, in its turn, became article 338 of Law 105, as has been stated.



694). ART. 830. The judgments of the Federal Supreme Court and of the national Courts do not require the formality of registration in order to produce all their effects.

2652, subdivisions 2 and 6 of the Civil Code.

695). ART. 831. A final judgment must be executed; it is a ground for the exception of *res judicata*, and annuls any other judgment subsequent thereto, rendered in the same matter and between the same persons, with the exception of the cases mentioned in the following article and decisions rendered in summary proceedings, as while they must be fulfilled and executed, they may be reviewed in an ordinary action, in the cases expressly provided for by the law.

689, 692, 693, 886, 1074.

696). ART. 832. When the person obliged to deliver a thing should be adjudged in accordance with the law, by reason of having lost said thing, to the payment of the value thereof, or to indemnify any loss and damage, if the owner should afterwards recover the thing, the effect of the judgment shall cease and if the person responsible should have made the payment already, he shall be entitled to the recovery of the amount given by him.

697). ART. 833. A decision rendered regarding an action deduced upon a thing, does not prevent a suit upon another different action deduced with regard to the same thing.

23.

698). ART. 834. Every decision or judgment shall be headed by the name of the Court or Tribunal rendering it, and the date, all written out. It shall be subscribed by the Judge or the Justice and the Secretary.

705.

699). ART. 835. A definitive judgment, or one having the force of a definitive judgment, must be rendered upon the thing, the amount or the act sued for; but hereon only and, it shall contain a motive and resolatory parts.

827.

700). ART. 836. In the motive part shall be stated, with the proper separation, the facts which have been the subject of evidence and the argument, and the grounds for the decision rendered, stating precisely the legal provisions or the reasons of equity or justice which constitute such grounds.

701.

701). ART. 837. In every judgment of whatsoever kind, to be rendered by the officials of the judiciary, they must take into consideration that the object of judicial proceedings, and the consequent rules which the laws establish therefor, is that the judgment be in accordance with the truth as to the facts, and in accordance with the substantive law as to the law. Consequently, any interpretation and application of the legal provisions relating to judicial proceedings must be directed to those ends which are those of jurisprudence.

702). ART. 838. In the resolatory part shall be stated clearly and precisely the manner of the decision of the controversy, giving each party his rights, and the Judge first stating that he does so "administering justice in the name of the United States of Colombia and by authority of the law."

701, 703, 707, 724, 827.

703). ART. 839. When there shall have been a number of points in litigation, judgment shall be rendered on each one of them, with the proper separation.

707, 827.

704). ART. 840. When there shall be an adjudication of fruits, interest, damages or losses, the extent or amount thereof shall be fixed by a net sum, or there shall be established at least, the bases in accordance with which the liquidation is to be made; only in the event that either should not be possible, shall the adjudication be made reserving to the parties their rights to have the amount or the extent of the fruits, interest or damages fixed in another suit.

724, 749, 755.

705). ART. 841. Every interlocutory judgment or ruling shall begin with the word "vistos" after the name of the Court or Tribunal and the date.

698.

706). ART. 842. Every definitive judgment shall be published in open court the same day that it may be signed, or the day following. The act shall take place by the Secretary reading in the presence of the Judge or of the Justices the resolatory part of the judgment.

707). ART. 843. All questions which may have been the subject of argument shall be decided in the judgment.

703.

708). ART. 844. Notice of every ruling or judgment shall be served on the parties within the terms prescribed in the respective chapter.

192 to 230.

709). ART. 845. The decisions and judgments which close an instance shall be copied in full in a book consisting of common paper, which the Secretary shall keep. This book is authentic in any cases of loss of or alteration in the processes

710). ART. 846. A judgment rendered in a suit prejudices only those who litigated in person or through legal representatives, or their heirs, or their legatees, if the latter should be the legatees of the same thing which was the subject of the suit, and those who may subsequently acquire from the former said thing by any title, in accordance with the provisions of the following articles.

729, 751 second par., 752, 774, 1055, 1130 and citations.

711). ART. 847. If a suit for a thing belonging to another should be brought against the possessor thereof, and the latter should be defeated the judgment rendered in said suit will not prejudice the owner, whether or not he shall have had notice of the suit, and he may demand the thing of any person who may have it, reserving the right of prescription, in accordance with the substantive laws. But if the person who lost the suit, possessed in the name of the person claiming to be the owner, the provisions of article 276\* shall be observed.

952, 953, of the Civil Code.

712). ART. 848. If any of the heirs of a debtor should be individually adjudged to pay the debt, such judgment will not prejudice the other heirs, even though they should have had notice of the suit.

713. 1411 to 1434 of the Civil Code.

713). ART. 849. If any of the heirs of a creditor should institute a suit for the payment of the debt and judgment should be rendered against him, such judgment shall not prejudice the co-heirs as to the part of the credit corresponding to them, even though they should have had knowledge of the suit.

712.

714). ART. 850. When two or more persons shall constitute themselves the debtors of others for the whole or jointly and *in solidum*, or when a thing should be promised to a number, so that each of them

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\* Ordinal 28.

may sue for the whole, in such cases the judgment rendered against any of said persons by reason of the things for which they are obligated, or to which they were entitled, prejudices all those jointly involved, even though some of them should not have taken part in said suit.

729.

715). ART. 851. If a person should have a thing of another in pledge and should see and know that the person who pledged it has been sued by another for the ownership thereof, if he should not contradict that complaint and a judgment should be rendered against the person who pledged the thing, such judgment will prejudice him who received the pledge, who shall be obliged to deliver it to the plaintiff in whose favor judgment may have been rendered.

The same must be observed if the judgment should be rendered before the giving of the pledge, but if after the thing may have been pledged he who pledged it should enter into a suit regarding it, the person who received the pledge not knowing thereof, the latter shall not be prejudiced by the judgment rendered

729.

716). ART. 852. If anyone should know that the parents of his wife have been sued for any of the things given the former by reason of marriage and should not contradict the complaint, the judgment rendered in such suit shall prejudice him as if he had intervened therein.

729.

717). ART. 853. If the purchaser of a thing sees and knows that the vendor becomes a party to a suit with another thereon and does not contradict it, the judgment rendered against the vendor will prejudice the purchaser also reserving, his right of warranty against the person who made him the sale.

The provisions of this article shall apply only when the vendor shall not have delivered the thing to the purchaser, for if the latter should already be in possession thereof, the suit should have been brought against him, and no proceedings which have been entered into without his assent shall prejudice him.

729. 952 of the Civil Code.

718). ART. 854. The judgment rendered in a suit of filiation between father and son, will benefit or prejudice the relatives, even though they should not have taken part in the suit.

729. 216 to 223 and citations of the Civil Code.

719). ART. 855. If a person should without legal cause disinherit any of his descendants or of his ascendants, in a proper case, and should institute others as the heirs to his property, the judgment rendered hereupon shall prejudice not only the heirs who defended the testament in court, but also the legatees in case the legacies encroach on the legal portions.

729. 1419 of the Civil Code.

720). ART. 856. In acts which may give rise to a popular action against those executing them, if any person should sue thereon and judgment should be rendered in favor of the defendant no one can again bring a suit upon the same acts under the same popular right of action, unless there shall have been fraud in the first suit.

721). ART. 857. If one of the co-owners of an estate held in common should claim a servitude in favor thereof, the judgment declaring the servitude shall benefit all the co-owners; but a judgment denying it, shall prejudice only those who may have litigated.

729.

722). ART. 858. If in a suit of interest to a number, a judgment should be rendered against all, and only one or some of them should appeal therefrom, if on the appeal a favorable judgment reversing the first one should be rendered, it shall benefit all, as if all had appealed.

729.

723). ART. 859. A definitive judgment cannot be revoked nor amended by the Judge who rendered it, but if silence should have been observed therein regarding fruits, interest, damages and costs of procedure, or judgment should have been rendered for more or less than the amount due, the Judge may subsequently decide thereon, provided that the declaration be requested of him by a legitimate party on the same day upon which notice of the judgment is made, or within three days after its rendition, if it should not be necessary to serve notice of the latter immediately.

Expressly repealed by article 338 of Law 105, and subrogated by the following:

724). ART. 99 of Law 105 of 1890. (This article merely corrects what was an obvious repetition or clerical error in the preceding and which was corrected in the translation as it could not be reproduced in English.)

726, 728, 205, 199.

Subrogated by article 17 of Law 169 of 1896, and expressly repealed by article 17 of Law 169 of 1896.

725). ART. 860. The Judge may also, on the petition of a legitimate party, elucidate obscure sentences or those having a double meaning in the definitive judgment which might be a real cause of doubt.

Expressly repealed by art. 338 of Law 105 and subrogated by the following:

726). ART. 100 of Law 105 of 1890. The superior Judge or Tribunal may also, on the petition of a legitimate party, elucidate obscure sentences or those having a double meaning in the definitive judgment which might be a real cause of doubt.

724, 728.

727). ART. 861. Interlocutory decisions and those of mere practice may be amended and revoked by the Judge who rendered them, for a legal cause and on the petition of a legitimate party made within the peremptory term of three days, counted from the date of service of notice of the decision.

Therefore, no interlocutory decision or judgment can be considered final until the expiration of the three days granted for requesting its amendment or revocation, unless that within such time the parties shall in some manner have manifested that they agree thereto.

689, 229.

728). ART. 862. Any judicial decision, of whatsoever class, in which a pure and manifest arithmetical error shall have been committed, may be corrected or amended at any time by the Judge or Tribunal who rendered it, *ex proprio motu* or on the petition of a party, but only as to the numerical error committed.

724, 726.

729). ART. 863. Any person who might be prejudiced or benefited by a judgment, even though not a party to the suit, may intervene therein without the necessity of citation, supporting or defending the cause which interests him.

710, 714 to 719, 721, 722, 742, 774.

The following article is supplemental:

730). ART. 101 of Law 105 of 1890. The judgments rendered by the Supreme Court of Justice with regard to the Ordinances of the Departments, must be executed upon becoming officially known to the authorities entrusted with their execution. An official knowledge shall be presumed by the fact of the receipt in the capital of the respective Department of the newspaper destined to the publication of such judgments.

## TITLE V.

## FIRST AND LAST CHAPTER.

*Costs.*

731). ART. 864. In every definitive or interlocutory judgment the costs must be taxed against the party cast, in the following cases:

1. When in the opinion of the Judge the injustice of the claim in the action or the exception sustained by said party shall have been evident; and

2. When he shall interpose an appeal, and the decision from which the appeal was taken should have been affirmed.

732). ART. 865. When the proceedings are annulled, the Judge or Secretary responsible for the nullity shall be liable for the costs.

When the fault shall not be entirely that of the Judge, as in the case of illegality of representation in one of the parties, which could have been noted by the Judge, the latter shall pay one-half the costs, and the person who has acted without legitimate representation, the other half.

When the fault is of one of the parties only, as in the case of illegality of representation which the Judge shall not have been able to note in the process, the costs shall be borne only by the person who has acted without legitimate representation.

835 to 838.

733). ART. 866. The costs shall always be taxed by experts appointed one by each party, and the third, to provide for disagreement, by the Judge or Justice.

The taxation, approved by the respective Judge or Tribunal, may serve as ground for execution (*presta merito ejecutivo*).

The following article is supplemental:

734). ART. 102 of Law 105 of 1890. In interlocutory judgments the appraisal or regulation of costs shall be made in the judgment itself, by the Judge or Justice pronouncing it, who may commission the Secretary to make such appraisal within the term which he may designate. The appraisal of costs, made by the Secretary, requires the approval of the Judge or Justice who ordered it.

735). ART. 867. In every appraisal of costs shall be computed: the value of the petitions presented by the party favored, the paper he may have used, the postage and judicial expenses he may have incurred in accordance with Title VIII of Book I.

The oral arguments or briefs (*alegatos*) shall be estimated by their author and regulated by the respective Judge or Tribunal, if the appraisal should be considered excessive.

Subrogated by the following article:

736). ART. 37 of Law 100 of 1892. In every appraisal of costs there shall be computed and charged to the person cast in the instance, appeal or incident:

1. Postage fees.
2. The stamped paper which may have been employed in the proceedings.
3. The witness and expert fees.
4. The work of the party or of his attorney, computed at the rate of two pesos per day for every working day, and deducting the delays not chargeable to the party cast; and
5. The other cases (costs) which by the nature of the matter or the evidence adduced the party favored may have been obliged to incur.

In actions of lesser import these costs shall be reduced to one-half with regard to the amount fixed for the work of the party or his attorney.

Subrogated by article 18 of Law 169 of 1896, and expressly repealed by article 69 of the said Law.

The ten articles which follow are additional:

737). ART. 103 of Law 105 of 1890.\* The defendant, in any ordinary action and in those which are converted into ordinary, has the right to demand that the plaintiff furnish a surety to answer for the amount of costs which may be taxed against said plaintiff. The surety must be a person capable of obligating himself as such; he must own sufficient property in order to be able to recover on the bond, and must be domiciled in the same Judicial district. In order to qualify the sufficiency of the property of the surety, the provisions of article 2376 of the Civil Code shall be observed.

739 to 742, 994 second par.

738). ART. 104 of Law 105 of 1890. In the order of the Judge directing the furnishing of surety he shall fix according to his discretion, the amount to which the surety is to be liable, taking the following into consideration: if the amount involved in the matter should be from fifty to five hundred pesos, that of the surety shall be from twenty-five to a hundred pesos; if the amount should be of five hundred pesos or more the amount of the bond shall be from a hundred to five hundred pesos.

In affairs in which the amount involved is less than one hundred pesos,

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\* Supplemented by articles 19 and 20 of Law 169 of 1896.



and in those in which no amount can be fixed by reason of their nature, such as those relating to divorce or the annulment of a marriage, the civil status of persons, etc., there is no obligation to furnish a bond for costs.

746.

739). ART. 105 of Law 105 of 1890. The plaintiff may, instead of furnishing a surety deposit the amount which the Judge may have fixed in accordance with the provisions of the preceding article. Said amount shall be deposited, at the option of the Judge, either in an institution of credit, if there should be in the seat of the Circuit, or with a person residing in the place where the proceedings are being held, under the liability of the Judge, in the event that such institution or person should not be of well known financial standing. The person designated by the Judge is obliged to accept the deposit, unless there should exist or there should later occur a grave objection which the Judge shall find good and sufficient.

740). ART. 106 of Law 105 of 1890.\* If within the term fixed by the Judge, which cannot exceed thirty nor be under ten days, the plaintiff should not furnish the surety for costs or should not deposit the amount fixed by the Judge, it shall be presumed that he has temporarily desisted from the suit, not being permitted, consequently, to institute a new one based upon the same cause of action for two years, from the date of the ruling declaring the desistance.

The Judge shall state, in the order directing the furnishing of bond, that if it be not furnished within the time fixed, the desistance shall be presumed as of right.

If at the proper time a new suit between the same parties and upon the same right of action should be instituted, and it should become necessary to decree the desistance for the same cause as that referred to in this article, such desistance shall not be considered as temporary, but absolute, the right of action being thereby extinguished.

The decree of temporary desistance produces the effect of the prescription of the right of action not being considered as interrupted by the suit.

319, 327 and citations, 308, 683.

741). ART 107 of Law 105 of 1890. When the bond should not have been required in the first instance, it cannot be required in the second if the defendant only should have appealed from the judgment.

742). ART. 108 of Law 105 of 1890. A person who makes himself a

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\* Amended by article 19 of Law 169 of 1896. Neither the Nation nor the Departments or Municipalities are obliged to give bond.

party to a suit, either by joining the plaintiff or intervening otherwise, must also furnish surety for the costs if any of the parties in the suit should so require. If the surety should not be furnished within the term fixed by the Judge according to article 106,\* the intervention of said intervenor or interpleader shall be absolutely ignored; but the bond may be constituted later, and if this should be done the petitions originally made by the intervenor or interpleader shall be considered as made on the day such surety may be furnished.

743). ART. 109 of Law 105 of 1890. If the defendant against whom a suit is brought upon the ownership of an immovable, shall establish that he possesses it by virtue of a registered title, and the Judge should consider the latter sufficient, he shall not order the inscription made which article 42 of Law 57 of 1887 prescribes until the plaintiff shall furnish bond for costs, if the defendant should require it before making answer to the complaint; if the inscription shall already have been ordered, the Judge shall direct that it be not made or that it be cancelled if already made; but a new order shall be issued as soon as the surety is furnished.

744). ART. 110 of Law 105 of 1890. The plaintiff may, in the complaint itself, offer surety in advance for the costs, or petition that the Judge fix the equivalent amount. After the surety shall have been furnished or the deposit made, the complaint shall be referred to the defendant, and the provisions of the preceding article shall not apply.

If the plaintiff should be suing *in forma pauperis*, he shall not furnish surety for the costs; but if the defendant should possess the thing involved in the suit, under a registered title, the Judge shall not order the record referred to in the said article 42 of Law 57 of 1887 to be made, if in his opinion said title should be sufficient; if he shall already have ordered it, he shall direct that it be not made, or that it be cancelled if already made. Consequently, in this case and for the purposes of article 1521 of the Civil Code, the immovable claimed shall not be considered in litigation; but if judgment should be rendered in first instance for the plaintiff, the record prescribed by the aforesaid article 42 shall be ordered in the judgment, which order shall be communicated to the Registrar on the same day the judgment is published. From the date of the record, it shall be understood that the immovable the subject of the suit is in litigation.

745). ART. 111 of Law 105 of 1890. In order to establish the sufficiency of a registered title, in all cases in which this Law speaks of titles, of this character, the title itself shall be exhibited, which shall be that which the law requires, according to the case, and which must bear the proper memorandum registration. In addition, a certificate issued by the respective Registrar of Public Instruments shall be presented, show-

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\* Ordinal 740.

ing: 1. That the record of the title—which record and title shall be designated by their numbers and dates—has not been cancelled by any of the three means mentioned in article 789 of the Civil Code; and 2. That the records prior to the present one, covering a period of ten years, have been cancelled in accordance with the said article, up to the present record. If there should have been no record during this time, it must be established that the record which has been cancelled by the present one precedes the latter by ten years at least; if this should not be established by reason of there not being any record cancelled in a period of twenty years, it shall be sufficient that the date of the instrument presented be twenty years old, with relation to the moment it is exhibited.

746). ART. 112 of Law 105 of 1890. The bond for costs is constituted by an entry (*diligencia*) embodied in the record, in which shall be stated the amount fixed by the Judge for the liability of the surety, which entry shall be signed by the Judge, the surety and the Secretary. With a copy of said record of bond, of the taxation of the costs and the decree approving the latter, which shall be subscribed by the officials aforesaid execution may issue against the surety to the amount for which he made himself liable, if the taxation of costs should amount thereto.

## TITLE VI.

### FIRST AND LAST CHAPTER.

#### *Execution of Judgments.*

747). ART. 868. The execution of a judgment pertains to the Judge who pronounced it in first instance. In case the action should have had one instance only, or that the judgment must be executed notwithstanding the appeal, its execution pertains to the Judge or Tribunal who rendered it, who shall proceed in person or through a commissioner, in a proper case.

761.

The following article is supplemental:

748). ART. 113 of Law 105 of 1890. Definitive judgments in a civil action, which have become final, must be executed even though an action for annulment thereof has been or might be instituted.

751.

749). ART. 869. The net sum which is caused to be owed by a judgment, either for the principal value only, or for the latter and the accessories, such as costs, fruits, interests, etc., must be paid within six days after service of notice of the judgment, and the recovery may be made by executory process in case of delay.

754.

750). ART. 870. When the obligation to deliver a thing or to perform some act should result from a judgment, it must be fulfilled within three days after service of notice of the judgment, if no other term shall have been fixed, and executory process also lies in case of delay or resistance on the part of the person obligated.

754.

Supplemented and amended by the following article.

751). ART. 114 of Law 105 of 1890. When the obligation to deliver real property shall result from said judgments, and the delivery should not be effected within three days after notice of the judgment, the Judge shall proceed to deliver the thing, availing himself of force, if necessary.

In the case of this article, no opposition whatsoever shall be allowed from the persons prejudiced by the judgment, in accordance with articles

846 *et seq.*, of Title IV, Book 2 of the Judicial Code, nor from those included in the last case of article 871 of the said Code.\*

710, 752, 753, 756, 1055, 1130.

752). ART. 871. When in fulfillment of a judgment execution should issue for the delivery of a thing, neither those who may have litigated, nor their heirs or legatees, can intervene therein as such, nor those who may have acquired the thing by alienation from the person defeated in the suit, after notice of the reference of the complaint shall have been served.

751.

753). ART. 872. If the judgment should declare in favor of anyone the possession of a thing, the Judge shall execute it by directing the delivery of the thing, with a citation of the adjoining owners and the other persons interested, without having recourse to ejection, and if at the time of the delivery any person should oppose it, he shall be directed to submit his objection in writing within nine days.

If no one should object, or if the person objecting should not prepare his objection within the term indicated, the delivery shall be carried out by causing those occupying it to disoccupy it, making use of force if necessary; but if the opposition should be submitted in the time granted for the purpose, it shall be referred to the other party, and after an answer being made an ordinary action shall be prosecuted.

751.

754). ART. 873. If the judgment should adjudge a person to not do something, it shall be executed by directing the party obligated to abstain from doing that which is forbidden in the judgment, with an admonition that in the event of his disobedience he will be obliged to pay the damages which may be caused, without prejudice to the criminal action which may lie.

755). ART. 874. If the judgment should order the payment of an unliquidated amount for fruits, the indemnity of loss and damage, or anything similar, it shall be executed, after ordinary proceedings for an accounting (*juicio ordinario de cuentas*), in which shall not be discussed the obligation of paying, but the amount to be paid under the first judgment, and according to the bases which may have been established therein.

704.

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\* The judgments referred to are those specified in ordinal article 748.

756). ART. 875. In the case of article 872 no persons who are not allowed to intervene, in accordance with article 871, shall be permitted to make objection, therefore he who makes the objection must at least attach the summary evidence that he is the owner of the thing, without which requisite he shall not be permitted to object.

751.

757). ART. 876. Judgments rendered in foreign countries shall have in Colombia the force established by the respective treaties of the Governments of said countries with that of this Republic. If there should not be any special treaties with the Nation in which the judgment whose execution is in question was rendered, such judgment shall have in Colombia the same force as is given the judgments of the Colombian tribunals in said Nation.

759.

758). ART. 877. If the final judgment should emanate from a country in which the decisions of the Colombian tribunals are not executed, it shall have no force whatsoever in Colombia.

The burden of proving the circumstances referred to in this article by way of exception rests upon the defendant.

762, 763.

759). ART. 878. If the judgment be of those which must be executed in Colombia, it shall so be if the following conditions be attendant: 1. That it has been rendered as a consequence of the exercise of a personal right of action; 2. That said right of action and its correlative obligation be legal in Colombia; and 3. That the execution be vested with the legal requisites necessary in the Nation in which it may have been rendered, and that, furthermore, it be authenticated as provided in article 337\* with respect to powers of attorney.

760, 577.

760). ART. 879. The legality and the force of judgments rendered in a foreign country is established by a certificate issued by the diplomatic or consular agent of Colombia or of a friendly nation, stating: 1. That the judgment has been rendered in accordance with the laws of said country; and 2. That said laws provide no remedy to the person or persons upon whom are imposed the obligations contained therein.

If there should be no consular nor diplomatic agent of Colombia, nor of any nation friendly to the latter in the country from which the judgment the execution of which is in question emanated, the certificate re-

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\* Ordinal 104.

ferred to in this article may be requested of the Minister or Secretary of Foreign Affairs of said country, through the same Secretary of the Colombian Union.

761). ART. 880. The execution of the judgments rendered in foreign countries shall be requested of the National Judge of first instance who may be competent to take cognizance of the suit which may be brought against the person against whom the judgment was rendered whose execution is in question.

762). ART. 881. The Judge, after the translation of the judgment in legal form, and after having heard the party against whom it may be rendered, and the respective agent of the Department of Public Prosecution, shall declare that the judgment is to be executed, if all the parties should agree thereto.

758 second par., 763.

763). ART. 882. If the defendant or the agent of the Department of Public Prosecution should oppose the execution of the judgment, basing his opposition upon facts which it may be necessary to prove, the Judge shall take evidence on the matter for a common period of thirty days, upon the expiration of which, after hearing the parties to each of whom the case shall be referred for three days, the Judge shall decide within eight days whether the judgment should or should not be executed.

The decision of the Judge may be appealed from in both effects, and the Federal Supreme Court shall hear and decide the appeal, as that from an interlocutory judgment.

757 to 760.

764). ART. 883. The execution of the judgment having been definitely denied, it shall be returned to the person who may have presented it; but if it should be decreed that it can be executed, it shall be so executed in accordance with the laws of Colombia.

765). ART. 884. If the Nation should be adjudged to give pay or do something, the Judge to whom the execution of the judgment may pertain, shall transmit a copy thereof, through the regular channels, to the Federal Executive Power in order that its execution may be proceeded with, if it should be within its powers, or otherwise, that as soon as possible steps be taken before Congress for the enactment of a legislative Act providing for the execution of the judgment. Execution cannot, consequently, issue against the Nation.

The provision of this article must be understood without prejudice to the provision in special cases as to the manner of executing judgments rendered against the Nation.\*

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\* See ordinal article 730, which should have been inserted here.

## TITLE VII.

Appeals and Writs of Certiorari (*Apelaciones y Recursos de Hecho*).

## CHAPTER I.

*Appeals.*

766). ART. 885. The party believing himself aggrieved by the judgment of a Judge, whether such judgment be definitive or interlocutory, or that an irreparable damage is produced by the definitive judgment, has the right to appeal therefrom verbally at the act of the service of notice, or in writing, within seventy-two hours after the notification, if the judgment were a definitive one; or forty-eight hours, if it were an interlocutory judgment.

513, 768, 776, 588. Law 169 of 1896, article 15.

767). ART. 886. Orders of mere practice, even though they cause an irreparable damage, may be appealed from only in a devolutive effect, with the exception of the following, which may be appealed from in both effects.

1. Orders rejecting evidence of any character whatsoever, if the taking thereof shall have been requested within the term prescribed therefor; and

2. Orders denying the taking of evidence in a cause, or the extension of the term granted.

769, 770.

The following article is supplemental:

768). ART. 117 of Law 105 of 1890. A ruling denying the revocation of one from which an appeal was not interposed in due time, cannot be appealed from, unless the second ruling should contain a decision on a point not embodied in the first one. In such case the appeal shall lie with regard to said new point only.

513, 776, 773.

## SEVENTEENTH AMENDMENT.

(Of Law 46 of 1876.)

769). ART. 887. The appeal from orders or mere practice must be interposed within forty-eight hours after notice is served or becomes effective.



770). ART. 888. The decisions mentioned in article 885 may be appealed from in a suspensive effect, which means that the execution thereof and the progress of the cause must be suspended until the appeal may be decided by the superior.

This provision is understood to be without prejudice to the express provisions in special cases.

779.

The following article is supplemental:

771). ART. 118 of Law 105 of 1890. In matters of voluntary jurisdiction appeals shall be granted in the effect designated by the appellant.

772). ART. 889. An appeal may be interposed from the entire decision or ruling, or from one or more parts thereof only. The co-litigant has the right to join the appeal in so far as he may be prejudiced by the decision or judgment, and he must do so within the same term that is granted him to appeal.

Expressly repealed by article 87 of Law 100 of 1892, and subrogated by the following:

773). ART. 34 of Law 100 of 1892. An appeal may be interposed from an entire decision or judgment, or from one or more of its parts. The co-litigant has the right to join the appeal in so far as he may be prejudiced by the decision or judgment, and he must do so within the same term that is granted him to appeal.

513, 768, 776, 1465.

#### EIGHTEENTH AMENDMENT.

*(Of Law 46 of 1876.)*

774). ART. 890. Those who may be prejudiced by a definitive judgment, according to the provisions contained in the Chapter on "Decisions and Judgments" even though they may not have been parties to the suit have the right to appeal within forty-eight hours after the time they had knowledge of the injury which may have been committed against them, without prejudice to the action for nullity against the decision or judgment which affects them rendered without their having been summoned in legal form. But if the judgment should be in the last instance, they cannot make use of the right of appeal.

710.

775). ART. 891. The Judge, within twenty-four hours after the appeal may have been interposed, shall grant it in view of the proceedings had,

without referring it to the opposite party, if an appeal was taken in time, and shall direct that, after the citation of the parties, the record be transmitted to the superior, on or before the second day, if the superior and the inferior should be in the same place; or by the next mail, if they should be in different places; there shall be retained in either case, a legalized copy of the decision or judgment, with a memorandum thereon of the fact of an appeal having been taken therefrom.

779, 780, 781.

The three articles which follow are amendatory and supplemental:

776). ART. 119 of Law 105 of 1890. When a party should be adjudged to pay the costs by a final judgment, and said party should interpose an appeal or apply for a writ of certiorari, against a new decision of the Judge, without having paid the costs, the latter shall direct that said party be called on to make such payment. If five days should elapse after service of the order directing the demand for payment, without the party making the payment of the costs, the Judge shall deny the appeal interposed. From this last decision there is no remedy but a complaint.

777.

777). ART. 102 of Law 105 of 1890. If the Judge should grant one of the remedies referred to in the preceding article, without the appellant having paid the costs, the superior judge shall abstain from taking cognizance of the matter on the petition of the opposite party, and shall order that the proceedings be returned to the inferior court, without prejudice to taking the proper steps for the purpose of enforcing the liability which the Judge may have incurred.

778.

778). ART. 121 of Law 105 of 1890. In order that the two preceding articles may be applicable, it is necessary that the costs shall have been taxed, that an order approving the taxation shall have been made, and that the parties shall have been notified of the latter.

779). ART. 892. In the event of an appeal being granted in a devolutive effect, a copy of what may be necessary shall be transmitted to the superior, which copy shall be made at the cost of the appellant within the term which the Judge shall designate; such term is not subject to extension.

The devolutive effect consists in not suspending by virtue of the appeal either course of the action or the execution of the decision or judgment appealed from, so that in this case the jurisdiction of the inferior judge is not suspended, as is the case when an appeal is granted in a suspensive effect.

The first part of this article has been subrogated by the following article, which is also supplementary:

780). ART. 115 of Law 105 of 1890. In the event of an appeal being granted in a devolutive effect, the original of the pertinent part of the process shall be transmitted to the superior; a copy of what may be absolutely necessary for the continuation of the action before the inferior court shall be made at the cost of the appellant and left with him. This copy must be made and compared (*compulsada*) within the term which the Judge may designate and which he may extend for a just cause pleaded before the expiration of such term. If the copy should not be made and compared through the fault of the appellant, the Judge on the petition of the opposite party or on a report from the Secretary, who is obliged to make such report *ex proprio motu*, shall declare the appeal to be abandoned.

If the superior, for the purpose of rendering a decision, believes another portion of the record to be necessary, he may demand it; and the Judge shall forward it, making first a true copy of what may be necessary for the purpose of continuing the action.

770, 779, 775.

The two articles which follow are additional:

781). ART. 116 of Law 105 of 1890. An appeal having been granted in a suspensive effect, no copy shall be made of what may be pertinent for the purpose of realizing those granted to either of the parties in the devolutive effect; this is without prejudice to the continuation of the appeals for which the proper copies have already been made and transmitted to the superior court.

The Justice who is to take cognizance of the decision from which an appeal has been granted in a suspensive effect, shall also take cognizance of the other decision from which an appeal in a devolutive effect may have been granted, if they appear in the same case and are not included in the case provided for in the last part of the preceding paragraph. The Justice shall render a decision on the said decisions within a common term.

782). ART. 122 of Law 105 of 1890. Upon the receipt by a Tribunal of a Judicial District, or by a Circuit Judge, of the papers in a case forwarded to him on appeal from a definitive judgment or a ruling, if thirty days should elapse after the date of the receipt of the process and the parties should not consign the paper necessary for the purpose of continuing the cause, or should fail to take the steps necessary for the purpose, the judgment or ruling appealed from shall be declared final by the Justice or Justices taking cognizance of the appeal, or by the Circuit Judge who is to render definitive judgment on the remedy interposed, without the necessity of a petition by a party. This final judgment shall not prejudice the parties who may have performed their duties.

The provisions of the preceding paragraph are made to extend to the Supreme Court with regard to ordinary appeals and appeals for annulment of judgment (*casación*) excepting with relation to the term fixed therein, as the latter shall be sixty days from the date of the receipt of the process by the Court.

303, 306, 308, 319, 683.

783). ART. 893. The method of procedure in the Superior Court, in cases of appeals from definitive judgments, shall be that prescribed in each action. If interlocutory judgments are in question, or a case not especially provided for in this Code, the Superior Court shall conform to the provisions contained in the following articles.

784). ART. 894. The Justice whose turn it may be to hear and decide an appeal from an interlocutory judgment, shall immediately refer it to the Attorney General of the Nation, who shall make a report thereon within three days; after such report shall have been made, the said Justice shall direct that the matter be held in abeyance for four days, in order that within this term the parties may file their written arguments. Upon the expiration of the last-named term, the Court shall decide the appeal within the next four days, in view of the proceedings had.

785). ART. 895. The appeal having been decided, the parties shall immediately be notified by means of an edict, which shall be posted in the office of the Secretary for twenty-four hours, and upon the expiration of the legal term required for the decision to be considered final, the papers in the case shall without delay be returned to the inferior judge, a copy of the decision of the superior being retained in the respective book.

786). ART. 896. Upon receipt of the record by the inferior court, the Judge shall issue the proper decree of obedience and fulfillment of the superior resolution, notice of which shall be served on the parties.

787). ART. 897. In every case of appeal, save those expressly excepted by the law, there shall be returned to the inferior court, after decision shall have been rendered thereon, not only the proceedings had by him at first instance, but also those had at the second instance, there being always retained in the superior court a copy of the decision it may have handed down.

## CHAPTER II.

### *Writs of Certiorari (Recursos de hecho).*

788). ART. 898. Whenever an appeal shall be denied in any judicial proceeding, the aggrieved party may apply for a writ of certiorari (*recurrir de hecho*) to the superior, in order that it may be granted and decided, if it should be legal.

789). ART. 899. The party desirous of applying for a writ of certiorari shall request the Judge who denied the appeal, within twenty-four hours after service of the notice of denial, a duly authenticated copy of the decision appealed from, of the return of its service, of the petition interposing the appeal, and of the decision which denied it.

He must also demand a copy, if necessary, of any document, order or proceeding which may serve to judge the legality of the denial of the appeal.

792, 794, 799.

790). ART. 900. The Secretary shall place on the copies a memorandum of the date of their issue and delivery to the party, and the latter must apply to the superior court within three days, in addition to the time required to cover the distance.

793, 795, 1601.

791). ART. 901. An application for a writ of certiorari does not suspend the execution of the decision involved, nor the continuation of the proceedings before the inferior court, until the original record is called for by the superior court, by virtue of the admission of the remedy in a suspensive effect.

801.

792). ART. 902. The party desirous of applying for a writ of certiorari from a superior court, shall do so in writing, transmitting the copies referred to in article 899.

793). ART. 903. The Secretary of the Superior Tribunal shall make a note on the petition of the day and hour of its delivery and shall place it before the court.

794). ART. 904. After the assignment of the case, the justice who is to take cognizance thereof shall set a day within the next five days for the parties to present written or verbal arguments, and three days after that set for the hearing, the court shall decide whether the writ is granted or denied, directing in the former event, that the record be demanded of the inferior court, and in the latter case, that the petition and the copies presented therewith be filed.

The Prefects of the Territories shall pursue a similar method of procedure in admitting or denying petitions for writs of certiorari made to them.

The inferior Judge shall transmit the cause the very day he is requested to do so, if he should reside in the same place as the superior judge, or by return mail, if he should reside elsewhere.

795). ART. 905. In order to grant a petition for a writ of certiorari the Court shall ascertain: 1. Whether the decision involved may be

appealed from; 2. If a timely appeal was interposed; 3. Whether the application for the writ has also been made within the proper time; and 4. Whether the matter is of a national character, by reason of the interest of the Nation therein.

In the absence of any of the circumstances enumerated herein, the application shall be denied.

790, 793.

796). ART. 906. If the Superior Judge should be of opinion that he cannot form an opinion from the copies presented, as to the legality with which the appeal was denied by the inferior court, he may call for a copy of such other data as he may deem necessary.

797). ART. 907. Upon the receipt by the Superior Tribunal of the original process or of a copy thereof, according as to whether the remedy shall have been admitted in a suspensive effect or in a devolutive one only, the method of procedure shall follow the provisions of the preceding chapter, as if the appeal had been granted in the ordinary form.

798). ART. 908. In the same decision admitting the application, the other party shall be ordered summoned, at the cost of the appellant, in order that within the term allowed him, if the inferior judge should not reside in the same place as the superior, or three days if he should reside in the same place, he may enter an appearance personally or through an attorney in fact to protect his rights in the cause.

799). ART. 909. If a petition for a writ of certiorari shall have been applied for against a court residing in the same place as the superior court, and it should be allowed only in a devolutive effect, the appellant shall be allowed a term for a presentation of a copy of the record, in order that he may continue the appeal in the effect granted. Upon the expiration of the term allowed without the presentation of the true copies of the record, the appeal shall be considered to have been abandoned, unless the appellant shall establish that he was not responsible for the delay.

802, 789, 800.

800. ART. 910. If the copies presented by the petitioner should be sufficient for the purpose of deciding the appeal granted in the devolutive effect, a copy of the proceedings shall not be necessary, and the case shall be proceeded with without the same.

789.

801). ART. 911. An appeal having been allowed in a suspensive effect by virtue of an application for a writ of certiorari, the superior judge

shall order the inferior judge in the same decree admitting it, that he suspend all proceedings in the cause, until the appeal is decided.

791.

802). ART. 912. If the appeal should have been granted in a devolutive effect only, and the aggrieved party should so appeal, and apply for a writ of certiorari as to the effect denied, the superior court shall examine as to whether the appeal should have been granted in a suspensive effect, and in affirmative case, shall admit it in such effect; but otherwise shall deny the writ and continue the appeal in the effect granted by the inferior court.

799.

803). ART. 913. From the decision of the superior as to the admission or denial of the petition for a writ of certiorari, there shall be no remedy but a complaint.

## TITLE VIII.\*

## FIRST AND LAST CHAPTER.

*Nullities.*

804). ART. 914. The following are causes of nullity, common to all judicial proceedings.

1. Lack or incompetency of jurisdiction.
2. Illegitimacy or insufficiency of the representation in any of the parties.
3. The failure to notify the parties of the appointment of Co-judges, of accountants, of experts and other persons who may be obliged to take part in the proceedings, when such intervention be not by reason of their office, or in the cases expressly excepted in this Code.
4. The failure to personally serve a notice when service in this manner is required by the law; and
5. The failure to render judgment in the form prescribed in articles 834 to 838.

## NINETEENTH AMENDMENT.

*(Of Law 46 of 1876.)*

805). ART. 915. Causes of nullity in ordinary actions are:

1. The failure to legally notify the defendant of the complaint; but if the latter should have made answer to the complaint, or should have defended himself in the suit, he cannot plead this cause of nullity.
2. The failure to take evidence in the suit when there are matters to be proved, unless a question shall have been raised hereon, and it shall have been decided that there was no occasion to take evidence in the cause; and
3. The failure to cite the parties for judgment.

806). ART. 916. The following are causes of nullity in an executory action:

1. The failure to legally notify the debtor of the executory action.
2. The failure to cite the execution debtor, or the person representing him, for the judgment of posting and public sale of property.
3. The failure to post the notices when the debtor shall not have renounced the same, for the sale of the property to be sold; and the failure

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\* All the articles of this Title—Ordinal Nos. 804 to 818—were expressly repealed by article 338 of Law 57 of 1887, with the exception of 928. Law 105 of 1890, article 338, again repealed the said articles, and also excepted article 928 from the derogation. This Law subrogated the articles repealed by ordinal articles 819 to 838.



to hold the sale in accordance with the provisions of article 1060 to 1066; and

4. The failure to admit the legal exceptions which the execution debtor may note, provided that he shall have pleaded them within the term mentioned in article 1053.

807). ART. 917. The following are causes of nullity in insolvency proceedings:

1. The failure to have called by edicts the creditors and the debtor absent at the time of the institution of proceedings.

2. The failure to appoint a defender for the property subject to the insolvency proceedings, in the cases prescribed by law.

3. The failure to have evidence taken in the cause and to publish the order directing the production of evidence by edicts.

4. The failure to have cited for judgment, or fixed a day for the arguments; and

5. The failure to have published the judgment in the form prescribed in article 1188.

808). ART. 918. The illegitimacy of the representation of one or more of the creditors in insolvency proceedings, does not annul them; but the petition of those who may have lacked legitimate representation shall be rejected, and they shall be adjudged to pay the costs which they may have caused.

From this provision is excepted a case in which the person interested may have ratified the proceedings had, which he may do at any stage of the said proceedings.

809). ART. 919. At any stage of the proceedings, at first or second instance, if the Judge or Justice taking cognizance thereof should note, before rendering judgment, that there is a cause of nullity, he shall so notify the parties, and if any of them should request a rehearing of the case within twenty-four hours after notice of the respective ruling, the proceedings had shall be annulled by the Judge or Tribunal, and the proceedings shall be returned to their state at the time the nullity was incurred. But if none of the parties should request the rehearing of the process, the proceedings shall pursue their natural course, and such nullities can no longer be pleaded in a subsequent instance, nor in any other proceedings for annulment.

The provisions of this article do not extend to nullities due to lack of jurisdiction on the part of the Judge, and illegitimacy of representation in any of the parties, with regard to which the provisions of the following articles shall be observed.

810). ART. 920. At no time can one of the parties plead such nullities as affect the contrary party only, the latter being the only one which has the right to request a review of the proceedings in such case. A cause of nullity by reason of the illegitimacy of representation with regard to which the special provisions of article 924 shall govern, is excepted.

811). ART. 921. Incompetency of jurisdiction which cannot be prorogated annuls the proceedings, and in such case it is not necessary to advise the parties.

812). ART. 922. Illegitimacy in the representation exists in a party when such party or his attorney should not be a legitimate person to appear in court, either generally or in said specific suit.

813). ART. 923. Insufficiency in the representation of a party exists when such party is represented in court without a power of attorney or mandate having been granted by the same, by a person not of those who do not require a power of attorney in accordance with the law, or when the power or the title of the representation lacks any of the legal requisites.

814). ART. 924. In the case of illegitimacy in the representation of any of the parties, the proceedings shall always be annulled even though no request therefor be made, unless, the representation being legalized, both parties shall in an express manner ratify what may have been done before, for which, before pronouncing the annulment, the Judge or Magistrate taking cognizance of the cause shall announce the nullity to the parties, in order that within forty-eight hours they may make use, if they so wish, of the right granted by this article.

#### SIXTH AMENDMENT.

*(Of Law 53 of 1882.)*

815). ART. 925. In the case of insufficiency of representation of any of the parties, this cause of nullity shall by means of personal notification, be communicated to the party improperly represented, and if such party should ratify the proceedings had and legalize his representation the proceedings shall not be annulled; but it is necessary that the ratification be made in an express manner; silence of the party shall not be sufficient to make the proceedings valid.

The personal notification referred to in this article may be served not only upon the person interested, but also upon his attorney in fact, duly constituted, who may likewise ratify the proceedings had; and in such case it is not necessary to legalize the representation.\*

816). ART. 926. The nullities which may have been incurred in the first instance, may be pleaded therein in the second instance: but not in the latter when in the former a decision shall have been rendered by a rule which has already become final or when they shall have been cured in accordance with the preceding articles.

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\* Expressly repealed by article 338 of Law 105 of 1890; it had already been repealed by article 338 of Law 57 of 1887, which declared amendment 6 of Law 53 of 1882, which is this article, to be repealed.

817). ART. 927. With the exception of the cases mentioned, the nullities of proceedings cannot be pleaded or enforced, whether a judicial decision shall have been rendered thereon in accordance with the provisions of this Title, or whether nothing shall have been decided in the matter, as it is during the course of the proceedings themselves, and in accordance with the said provisions, that the parties must take care to denounce the nullities from which such proceedings suffer.

#### SEVENTH AMENDMENT.

(Of Law 53 of 1882.)

818). ART. 928. When in a case of insufficiency of representation if the party improperly represented should not be able to ratify the proceedings had, by reason of his death without having left heirs, being a moral or juridical entity with no one to represent it legally, or for any other reason similar hereto, all the proceedings had from the time the said nullity began to affect them, shall be annulled.

This provision is not an obstacle to the ratification of the proceedings had, if a company be the party improperly represented in the suit, by the person representing the Company. The personal notice referred to in Amendment 6 of this Law, shall be served upon the person establishing that he can represent the Company in court.\*

NOTE:—The following articles, Nos. 819 to 838 of order, are the articles of Law 105 of 1890 which subrogate the preceding ones of this Title.

819). ART. 123 of Law 105 of 1890. The only causes of nullity in all judicial proceedings are:

1. Incompetency of jurisdiction:
2. Illegitimacy in the representation of any of the parties.

820, 821, 826.

820). ART. 124 of Law 105 of 1890. Incompetency of jurisdiction does not produce nullity in the following cases:

1. If the jurisdiction is subject to prorogation and the parties have taken part in the suit without making the proper objection.
2. If having objected upon this point, the objection shall have been overruled, and such declaration shall have become final or been confirmed.
3. If the jurisdiction be not subject to prorogation and the proceedings had are ratified.

828, 829, 832 subdivision 1.

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\*This is the only article of this Title which has not been expressly repealed; but Amendment 6, to which it refers—ordinal article 815—has been repealed.

4. If the lack of jurisdiction arises only from an error in the distribution, by reason of having been made improperly, or not made whether in the superior or inferior courts.

5. When the only cause shall have been a declaration, improperly made, that some impediment or cause of recusation was legal or illegal; provided that such declaration or the order assuming the cognizance of the proceedings shall have become final.

609.

6. When due to another Justice or Judge not having jurisdiction having at some time taken cognizance of the matter, provided that such official shall have already separated himself from the cognizance thereof and the parties shall have continued availing themselves of their rights before another having jurisdiction; and

7. When the basis therefor shall have been the appointment to the office of a person who was not eligible.

821). ART. 125 of Law 105 of 1890. Illegitimacy in the representation of any of the parties is not a cause of nullity in the following cases:

1. When by a final decision, it shall have been declared that the representation of the party, his attorney or representative is legal.

2. When the records should contain a power of attorney in legal form conferred upon the person in question, even though the latter should not have admitted it expressly.

98, 99, 100.

3. When although the power be not sufficient, the party interested or some attorney in fact or legal representative of his, ratifies the proceedings had; and

4. When it shall appear clearly on the face of the records that the person interested has assented to the person who figures in the proceedings as his attorney, representing his rights, even though he should not have a power of attorney, or the latter should not conform to law.

90, 98, 99, 100, 114, 115, 130, 826, 831, 832 subdivision 2.

822). ART. 126 of Law 105 of 1890. In *ordinary suits* a cause of nullity is the failure to serve notice of the complaint upon the defendant. The following cases are excepted from the provisions of this article:

1. If the defendant shall have entered an appearance in person or through an attorney in the suit, making even one petition without demanding a declaration of nullity; and

2. If he shall have demanded such declaration and his request shall have been overruled, and the ruling doing so shall have been confirmed or become final.

832 subdivision 3, 833 paragraphs 1 and 3.

823). ART. 127 of Law 105 of 1890. In *executory actions* the following are causes of nullity:

1. The failure to legally notify the debtor of the writ of execution; and
2. The failure to post notices, when the debtor shall not have waived them, for the sale of the property to be disposed of at public sale, and a failure to hold the sale in accordance with the provisions of articles 1060 to 1066 of the Code.

824, 1068, 833 second par.

824). ART. 128 of Law 105 of 1890. Lack of citation for judgment directing the sale and announcement thereof by public crier, does not induce a nullity; but at any stage that the execution debtor may appear, he may plead exceptions, and in such case the announcement and sale of the property shall be suspended.

If the sale should have taken place, the money shall be placed in the hands of the person designated by article 245\* at interest, demanding it of the creditor if it shall already have been delivered.

825). ART. 129 of Law 105 of 1890. In bankruptcy proceedings, a cause of nullity is the failure to serve notice at least by an edict posted in the place of the proceedings for a term of thirty days, the order declaring the proceedings to have been instituted, excepting in the following cases:

1. If all the creditors and the debtor should have been personally cited.
2. When the creditors or the debtor not cited shall have been represented in the proceedings without this nullity having been pleaded after their first petition.

832 subdivision 2, 833 last par.

826). ART. 130 of Law 105 of 1890. The illegitimacy of the representation of him who represents a creditor in bankruptcy proceedings, does not entail the nullity of the principal proceedings; only the respective part of the proceedings had can be annulled, if the person interested should expressly so request.

819, 821, 832 subdivision 2.

827). ART. 131 of Law 105 of 1890. Nor does a failure to render judgment in the form prescribed in the Code entail a declaration of the nullity of the proceedings. But if the judgment should not clearly express the rights and duties which should result to the parties therefrom, a plea of nullity may be interposed when its execution is endeavored, or its annulment may be requested in an ordinary action

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\* Ordinal 1144.

which is not an obstacle to the elucidation of the obscure judgment, in accordance with article 860\* of the Code.

828). ART. 132 of Law 105 of 1890. In the case of subdivision 3 of article 124 of this Law, the ratification of the proceedings had does not give jurisdiction to the Justice or Judge to continue taking cognizance of the matter, and the record must be forwarded to the Judge or Justice of competent jurisdiction, in order that he may continue taking cognizance of the matter in the state in which it may be. In other cases he shall continue taking cognizance to the termination of the suit.

829). ART. 133 of Law 105 of 1890. The agents of the Department of Public Prosecution, the representatives of the corporations, congresses or communities, and guardians, cannot ratify the proceedings had before the Judge or Justice not having jurisdiction, in a case in which such jurisdiction should be subject to prorogation, except for cause of evident utility judicially declared.

820 subdivisions 3 and 6.

830). ART. 134 of Law 105 of 1890. A Justice or Judge taking cognizance of a suit who before deciding upon the main issue should observe that some cause of nullity exists, shall direct that the parties be informed thereof. If the person having a right to demand a review of the proceedings had should not demand it before the expiration of three days, or the proceedings had should be expressly ratified, the nullity shall be considered as cured, and the proceedings shall follow their course; but if said party should expressly request the annulment, the proceedings shall be annulled from the stage they had reached when the cause of nullity occurred, the proceedings had before remaining valid. Silence shall be considered as curing the nullity.

When in the Supreme Court and the Superior District Tribunals the record should have passed to the plural Chamber for its definitive decision, it shall be the duty of such chamber to notify the parties of the causes of nullity which it may observe in the proceedings, and pass thereon.

831, 832.

831). ART. 135 of Law 105 of 1890. In cases of illegitimacy of representation and in accordance with the preceding article, the respective decision shall be personally served upon the party interested, or upon the person legally representing him, in order that he may avail himself of his rights; and if the proceedings should not be annulled, the representation of him who figured improperly in the proceedings is thereby

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\* Ordinal 725.

legitimated. For this notification the provisions of article 25\* of this Law may be observed.

821.

832). ART. 136 of Law 105 of 1890. The following have the right to request a review of the proceedings had:

1. In a nullity by reason of incompetency of jurisdiction which could not have been prorogated, or which may not have been prorogated in accordance with the law, by any of the parties.

820.

2. In a nullity by reason of illegitimacy of representation of any of the parties the person interested whose rights may have been improperly represented or his legal representatives.

99, 821.

3. In a nullity by reason of failure to serve notice of the complaint or order of payment, the defendant or execution debtor.

822, 823 subdivision 1.

4. In a nullity by reason of a failure to summon or cite in bankruptcy proceedings, the creditor or creditors, or the debtor who may not have been cited; but if the debtor should have been the petitioner in bankruptcy, the proceedings shall not be annulled by reason of a failure to cite the bankrupt.

825, 829, 1153 subdivision 3, 1155, 1219.

833). ART. 137 of Law 105 of 1890. A cause of nullity consisting in a failure to serve notice of the complaint upon the defendant, reserving the exceptions established in article 126† of this Law, may be pleaded in the proceedings themselves, or as an action in different proceedings: or as an exception when the judgment is about to be executed.

The causes of nullity established in article 127‡ of this Law, may be pleaded; the first, during the proceedings or in a different proceeding; and the second, only in the last named manner.

The exceptions established in article 126 apply to executory actions.

A cause of nullity consisting in a failure to serve notice of the order regarding the institution of bankruptcy proceedings, reserving the exceptions established in article 129§ of this Law, may be pleaded in the said proceedings, or as an action in a different proceeding.

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\* Ordinal 212.

† Ordinal 822.

‡ Ordinal 823.

§ Ordinal 825.

834). ART. 138 of Law 105 of 1890. The actions or exceptions of nullity of definitive judgments of last instance, already rendered, which the respective persons interested have a right to propose in accordance with the legislation of the extinguished States in force, may be proposed in the terms established by such legislation.

835). ART. 135 of Law 105 of 1890. Whenever any proceedings shall be annulled, the costs pertaining to the part annulled shall be taxed against the official responsible for the nullity.

732 first par., 836, 837, 838.

836). ART. 140 of Law 105 of 1890. If the fault were not entirely that of the Judge, as in the case of illegitimacy of representation of the party who may have been admitted as such by the Judge when he should not have been so admitted, or in any other case in which the Judge should have noted the irregularity which was being incurred, one-half of the costs shall be paid by the Judge and the other half by the party responsible.

732 second and third pars.

837). ART. 141 of Law 105 of 1890. After the annulment of some proceedings or of a part thereof, the persons interested may revalidate the proceedings annulled, and upon this being done the adjudication of costs referred to in article 139\* shall have no effect whatsoever. If the costs should already have been paid, they may be recovered as an improper payment.

838). ART. 142 of Law 105 of 1890. When what is annulled consists of a portion of a process so that the proceedings are to be followed immediately after the same process, the official responsible for the nullity shall not be obliged to pay for the instruments and other documents which by a mere reproduction during the probatory term produce their effects.

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\* Ordinal 835.



## TITLE IX.

### Ordinary Actions.

#### CHAPTER I.

##### *First Instance.*

839). ART. 929. Every judicial controversy for which no special procedure is established by this Code, shall be heard and determined in an ordinary action, which is that treated of in this Title.

3.

#### TWENTIETH AMENDMENT.

*(Of Law 46 of 1876.)*

840). ART. 930. Every complaint shall be made in writing to the Judge or Tribunal competent to take cognizance thereof. The plaintiff may attach to the complaint such documents as he may deem advisable.

17, 19, 841, 859, 860.

841). ART. 931. If the complainant should not be able to attach to his complaint the documents upon which he bases it, he shall at least designate the archives or place where the originals are or should be.

19, 840, 859, 860.

#### TWENTY-FIRST AMENDMENT.

*(Of Law 46 of 1876.)*

842). ART. 932. The complaint shall begin with designation of the Judge or Tribunal to which it is addressed. In the body of the instrument shall be stated: 1. The name of the complainant, whether he sues on his own behalf or in the name of another, and his residence: 2. The name of the defendant, his residence, or his status, adding, if the defendant be a married woman, the name of the husband: 3. The subject of the suit: 4. The right, cause or reason for which the suit is brought. The facts supporting the complaint shall be placed thereafter, being clearly and specifically stated, and they shall be numbered, in order that each fact may appear separately.

17, 36 to 41.

843). ART. 933. The Judge to whom a complaint may be presented, shall return the same within twenty-four hours to the person presenting it, if it should lack any of the requisites mentioned in the preceding article, designating which is lacking; or when there is obscurity as to what is sued for, in order that it may be elucidated, so that the Judge may understand perfectly what is requested.

18.

844). ART. 934. The written complaint shall be ordered referred to the defendant for five days; for the issue of this order, the Judge is granted twenty-four hours

743, 744 second par., 855.

845). ART. 935. If there should be a number of defendants, the complaint shall be referred to each of them successively for the said period of five days. The order then observed among the defendants, shall continue to be observed in the subsequent proceedings in the action.

880.

846). ART. 936. The order directing the reference of the complaint shall also direct the making of a copy thereof, which must remain in the files.

344.

847). ART. 937. The defendant must answer either assenting to the action brought against him, or contradicting it unless he shall interpose dilatory exceptions, in which case the provisions of the Chapter relating thereto shall be observed.

265.

#### TWENTY-SECOND AMENDMENT.

*(Of Law 46 of 1876.)*

848). ART. 938. If the defendant should not assent to what is demanded of him in the complaint, he shall state briefly the reasons he may have for such non-assent, being allowed to attach the documents upon which he wishes to base them, and availing himself of the peremptory exceptions which relieve him of the charges of the complaint; and with regard to the facts contained and enumerated in the complaint, he shall make answer to each one of them, stating whether he accepts them as true or his reasons for not assenting thereto. The facts upon which

he bases the answer shall be arranged by the defendant in the same manner as required of the complainant.

842, 854.

# TWENTY-THIRD AMENDMENT.

(Of Law 46 of 1876.)

849). ART. 939.\* The answer to the complaint shall be referred to the complainant for three days in order that he may file a replication to what is stated therein, and in order that he may reply to the facts enumerated in the answer, in the manner prescribed for the defendant.

850). ART. 940.† The Judge, before hearing evidence in the cause, shall declare both the defendant and the complainant to have confessed the acts to which they may have made no answer, if able to do so. This declaration shall be made by observing the procedure established for incidental issues.

851). ART. 941. The Judge, in the order directing the submission of evidence in the cause, shall clearly determine the acts which are to be the subject thereof; which shall not be others than those indicated in the complaint and in the answers, and as to which the parties may not agree, either by express assent, or by a declaration of having confessed by reason of failure to answer.

When the complaint is not answered, all the facts therein stated shall be considered to be proved; but during the probatory term the defendant may adduce proof thereagainst.

852). ART. 942.‡ When it shall appear that there are no facts to be proved, the Judge shall declare that the controversy is one of pure law; and upon this ruling becoming final, he shall direct that the record be delivered to the parties for argument.

853). ART. 943. The parties may within twenty-four hours after having been notified of the order directing the taking of evidence, request that the taking of such evidence be extended to other points in addition to those determined by the Judge, and they have the right to interpose an appeal from the decision he may render in order that the superior may definitely fix the points to which the evidence is to be confined, and the probatory term shall not begin to be counted in this case but from the time of the notice of the order directing the execution of the decision of the superior.

This and the four articles preceding it have been expressly repealed and subrogated by the following four:

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\* Expressly repealed. See note to art. 853.

† Expressly repealed. See note to art. 853.

‡ Expressly repealed. See note to art. 853

854). ART. 143 of Law 105 of 1890. The Judge shall carefully examine the answer to the complaint, and if the defendant should not have made answer in the manner prescribed by article 938\* of the Judicial Code, he shall by means of an order indicate to him the defects in said answer, mentioning them in separate paragraphs as clearly as possible. The same order shall state that the defendant must within three days make the corrections ordered.

855). ART. 144 of Law 105 of 1890. The Judge, both in the order directing the reference of the complaint as in that directing the correction of the defects which the respective answer may contain shall inform the defendant that if he shall fail to make answer to the complaint in due time, or if he should not make the corrections indicated, either by failing to do so absolutely, or doing so after the three days, or because the corrections are incomplete or ambiguous, or not in accordance with the points of the complaint, he shall be adjudged in the definitive judgment, to pay, in addition to the costs which may be proper, a fine of fifty to three hundred pesos in favor of the complainant, if the definitive judgment were in favor of the latter. Such fine shall be imposed by the Judge in his discretion.

854, 857.

856). ART. 145 of Law 105 of 1890. The complaint having been answered and the corrections directed having been made, if the parties should agree as to the facts, but not as to the points of law, the Judge shall order that the record be delivered to each of the parties for argument; if they should also agree as to the points of law, they shall be cited for judgment. If there should be disagreement as to the facts, the Judge shall open the cause for the admission of evidence, in order that the parties may present such evidence as they may deem advisable.

The provisions of this article are without prejudice to the provisions of article 577 and 944† of the Judicial Code and of any other special provisions.‡

857). ART. 146 of Law 105 of 1890. If the defendant should fail to make answer to the complaint or not make the corrections which he may have been directed to make, the Judge shall confine himself to the taking of evidence, in order that the parties may present such evidence as they may deem proper, in accordance with the provisions of articles 542 to 544§ of the Judicial Code, the judge being obliged in the definite judgment to comply with the provisions of article 144.¶

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\* Ordinal 848.

† Ordinals 408 and 858.

‡ This article subrogates ordinal article 874, which was expressly repealed by article 338 of Law 105 of 1890.

§ Ordinals 371 to 373.

¶ Ordinal 855.

858). ART. 944. When the complaint is answered through a defender (*defensor*) or curator, and in suits for divorce by the spouse or legal representative, even though they should agree as to the facts or not make answer in an express manner, or in any manner whatsoever, the defendant shall not be held to have confessed, but the suit shall be submitted for evidence as if there had been contradiction.

387, 856 second par., 408.

859). ART. 945. The defendant is also obliged to present with the answer to the complaint, the documents upon which he bases his defense, or designate the archives or place in which they are or should be.

19, 840, 841, 860, 1373.

860). ART. 946. The complaint having been answered, neither the complainant nor the defendant can make use of other documents of a date prior to the answer, unless they shall first swear, in due form, that the party had not had knowledge of these documents or that he did not believe them necessary for the defense of his rights.

19, 840, 841, 859, 1373.

861). ART. 947. The defendant may, if he believes that the complainant owes him something, interpose a complaint against him in the answer. Such complaint is called a counter-claim and the defendant by such act, submits himself to the jurisdiction of the Judge over the action brought by the complainant, even though he should be incompetent herefor.

#### TWENTY-FOURTH AMENDMENT.

(Of Law 46 of 1876.)

862). ART. 948. The counter-claim must be embodied in a document separate from the answer, but it shall be presented together with the latter and a separate record formed. It must contain the same requisites as all complaints, and if it should not be filed with the answer, the defendant shall not be able to enforce any right against the complainant except in a different action.

863). ART. 949. The complaint in reconvention shall be referred for five days to the complainant, and if the latter should persist in his complaint, denying that in reconvention, both shall be heard in the same proceeding (*bajo una misma cuerda*) and shall be decided by the same judgment.

## TWENTY-FIFTH AMENDMENT.

*(Law 46 of 1876.)*

864). ART. 950. Peremptory exceptions shall be proposed in the answer to the complaint, and the facts or documents upon which they are based shall be stated therein. These exceptions shall be decided in the definitive judgment.

288.

## TWENTY-SIXTH AMENDMENT.

*(Of Law 46 of 1876.)*

865). ART. 951. Between the time the complaint is referred until answer is made thereto, the defendant has the right to denounce the suit to the person whom he believes should come to the defense of the thing the subject of the suit, on account of being obliged to warrant it for any reason.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

866). ART. 147 of Law 105 of 1890. A purchaser who may have to be protected in accordance with the Civil Code in the ownership and peaceful possession of the thing sold, has the right to denounce any suit which he may have to bring or which may be brought against him, when due to a cause prior to the sale. If the action were an ordinary one, the right to denounce the suit continues to the day answer is made; if a special proceeding, the denunciation must be made within six days next after that on which the parties are notified of the first order in the proceedings in which a judgment is to be rendered which might affect the rights of the purchaser.

1894, 1895, 1896, 1897, 1899, 1900 and 1901 of the Civil Code.

867). ART. 952. The denunciation shall be made in writing before the Judge of the cause, and the person making it must attach thereto the evidence, even though summary, establishing that he can avail himself of such right, in accordance with the substantive laws.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

868). ART. 148 of Law 105 of 1890. The denunciation shall be made in writing, before the Judge of the cause, and the person making it must attach thereto full proof that he can denounce the suit in accordance with the law.

870. 1894, 1895, 1899 and 1900 of the Civil Code.

869). ART. 953. If the Judge should find that the denunciation is well based, he shall order that the person denounced be notified thereof, fixing a term, taking into consideration the distance at which he may be, for him to appear for the purpose of prosecuting the suit, and suspending, in the meantime, the course thereof.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

870). ART. 149 of Law 105 of 1890. If the Judge should find that there are grounds for the denunciation he shall order that the person denounced be notified thereof, fixing a term of five days, if he should reside in the same place, for him to appear for the purpose of prosecuting the suit, and suspending in the meantime the course thereof. If the person denounced should not reside in the same place, the Judge, taking into consideration the distance at which he may be, shall set a term for him to appear for the purpose mentioned, also suspending the course of the proceedings during such term.

The provisions of the preceding article are without prejudice to the provisions of article 955\* of the Judicial Code.

873, 1601.

871). ART. 954. If the person denounced should appear and become a party, the proceedings shall be continued with him, the person making the denunciation being permitted to continue intervening therein for the defense of his rights; but if the person denounced should fail to enter an appearance, the proceedings shall be continued with the defendant making the denunciation, unless he shall expressly excuse himself from becoming a party, in which case the plaintiff may proceed by way of assent or proof in default.

The following article is supplemental:

872). ART. 150 of Law 105 of 1890. If successive denunciations should be presented, whether the parties denounced do or do not become parties to the suit, the latter shall have the right to denounce it to the person whom they believe should assume the defense of the thing the subject of the suit, within five days after notice of the order admitting the previous denunciation.

873). ART. 955. When the person denounced is at such a distance that he cannot appear within thirty days, the proceedings shall not be suspended by reason of the denunciation, if the plaintiff should prefer to continue it with the first defendant.

870.

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\* Ordinal 873.

874). ART. 956.\* Answer having been made to the complaint, if the point under discussion should be one of pure law, or if the parties should agree as to the facts the cause of the suit, the Judge shall render judgment, after citation of the litigants, without the necessity of taking evidence in the cause.

In the case mentioned in this article, the restrictions established by article 577 must be borne in mind.

875). ART. 957. When there are facts to be established, upon which the parties do not agree, the Judge shall submit the cause for evidence for a term not to exceed thirty days, and on the petition of a party, there shall be granted, in addition, the time necessary to go and return, and ten days more, when evidence is to be taken outside of the place where the suit is being heard, and for such evidence only.

876.

876). ART. 958. When a party should request a term for the taking of testimony in a State other than that in which the suit is being held, or in a foreign country, he must affirm under oath, if it should not appear on the face of the record, the necessity of the evidence and the possibility of obtaining it; and if he should fail to present the evidence within the term which may have been granted him to obtain it, he shall be adjudged in the definitive judgment to pay the opposite party an indemnity of fifty to three hundred pesos, unless he shall prove that some unexpected accident prevented him from securing the evidence. Bond to the satisfaction of the Judge shall be furnished on this obligation, before the granting of the period.

The provisions of this article do not extend to the Agents of the Department of Public Prosecution who represent the Nation in judicial matters.

452 to 456, 1596.

877). ART. 959. The petition for time to take testimony in another State or in a foreign country, shall be heard and decided as an incidental issue.

878). ART. 960. Any petition for time, in addition to the ordinary term of thirty days, must be made within said term.

383, 560, 879.

879). ART. 961. If evidence should be requested or witnesses should be presented during the last two days of the probatory term, or the opposite party should be cited for the taking of some evidence after the

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\* Expressly repealed by article 338 of Law 105 of 1890, and subrogated by ordinal article 856.



expiration of such term, or the day upon which it expires, the latter shall be allowed, if he should need them, three days more for rebuttal, challenge and to prove the challenges.

880). ART. 962. Upon the termination of the probatory term the Secretary, without the necessity of a motion, shall so inform the Judge, who shall direct that the record be delivered to the parties in their order for the purpose of submitting briefs in support of their contentions, for six days to each.

845, 881.

881). ART. 963. If there should be three or more persons interested in a suit, the term within which to submit briefs in the case of the preceding article and other similar cases, shall not be six days for each party, but twelve, common to all; and in such case the records shall not be removed from the office of the Secretary.

882). ART. 964. After the submission of the briefs, or the return of the records, or the payment of the fines imposed by reason of the term granted the parties having expired, the Judge shall, the same day, order the parties cited for judgment.

345.

883). ART. 965. The judgment shall be rendered within fifteen days after the citation.

333, 334.

884). ART. 966. In case of an appeal from the judgment, the provisions of Title VII of this Book shall be observed.

783.

#### TWENTY-SEVENTH AMENDMENT.

(Of Law 46 of 1876.)

885). ART. 967. A copy shall be retained in a book to be kept for the purpose by the Secretary, of every definitive judgment rendered by Judges of First Instance.

886). ART. 968. Every judgment rendered against the Nation must first be submitted to the Federal Supreme Court for consultation, if it should not be appealed, the Judge and the Court proceeding as if it had been. Judgments in favor of the Nation become final by operation of law, upon the expiration of the term for appealing without an appeal having been taken.

Supplemented by article 30 of Law 169 of 1896.

TWENTY-EIGHTH AMENDMENT.

(Of Law 46 of 1876.)

§ This provision comprises the definitive and interlocutory judgments rendered in special proceedings.

1596.

CHAPTER II.\*

*Second Instance.*

887). ART. 969. Upon the receipt by the (Supreme) Court of a record on appeal from or consultation upon a definitive judgment, and upon being assigned as provided in article 22, the Justice hearing the case shall order it referred to the Attorney-General for a period of five days, in order that he may within such time state whether or not he has evidence to submit in the second instance.

888). ART. 970. For the term of five days, referred to in the preceding article, the other parties shall be informed by edict of the receipt of the records by the Court, for the same purpose as that stated with regard to the Attorney-General, at the close of the preceding article; the Justice hearing the case shall likewise embody such a provision in his first order.

During the term of the edict the records shall be open to inspection in the office of the Attorney-General, to any of the other parties who may request it, but without their removal being permitted.

889). ART. 971. Upon the expiration of the five days, if the records shall have been returned by the Attorney-General, the Secretary shall transfer them to the office of the Justice taking cognizance thereof, together with the requests which said official and the other parties may have presented during such term.

890). ART. 972. If none of the parties should have requested that the cause be submitted for evidence, the record shall be ordered delivered to the parties, for six days to each, in order that they may plead in writing.

891). ART. 973. Upon the expiration of the terms for the written pleadings, citation for judgment shall issue, and a date for the public hearing shall be fixed in the same order. The date therefor cannot be less than four nor more than eight days from the date of citation for judgment.

892). ART. 974. Within the fifteen days next after the last of the pleadings, the Court shall render judgment affirming, reversing or amending that at first instance, according as to whether such judgment does or does not conform to the laws and the merits of the case.

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\* All the articles of this Chapter have been repealed by article 338 of Law 105 of 1890, and subrogated by articles 899 to 917 of order.

## EIGHTH AMENDMENT.

(Of Law 53 of 1882.)

893). ART. 975. Upon the conclusion of the probatory term, the Supreme Court has the power to make orders in furtherance of justice (*para mejor proveer*), for the purpose of elucidating points which it may consider doubtful, and for the purpose of supplementing the evidence, in order that right may not be sacrificed to forms. Upon an order in furtherance of justice made in a proceeding having been fulfilled in all its parts, another cannot be made in the same proceeding; unless new facts shall appear which it is necessary to prove and which may have been suggested by the first order made.\*

894). ART. 976. The decision of the Court having been published and notice thereof served upon the parties, the provisions of article 895 shall be observed.

895). ART. 977. If within the term referred to in article 970, any of the parties should request that evidence be taken, the cause shall be submitted for evidence for a term of twenty days.

896). ART. 978. The provisions of articles 958, 959, and 960, are common to this chapter, with regard to evidence to be taken in a foreign country or within the Republic at a distance of more than 50 miriameters from the residence of the Court; but the petition for a term in such cases must be made during the first half of the probatory term in the second instance.

897). ART. 979. Upon the expiration of the probatory term, the Secretary shall so inform the Justice taking cognizance of the case, transferring the record to his office. From this stage on, the provisions of articles 972 to 976 shall be observed.

898). ART. 980. If nullities shall have been pleaded, or appear on the face of the process, the Court shall first pass thereon at any stage of the cause, and in accordance with the provisions of Title VIII of this Book.

*The following articles, ordinal arts. 899 to 917, subrogate all the preceding articles of this Chapter:*

899). ART. 151 of Law 105 of 1890. Upon the receipt by the Supreme Court or a Superior District Tribunal, of a record upon an appeal from or consultation upon a definitive judgment in first instance, and the assignment having been made, the Justice taking cognizance thereof shall direct that it be referred to the respective Agent of the Department of Public Prosecution for five days, in cases in which the Nation or another political entity should be interested, in order that within such

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\* This amendment takes the place of the twenty-ninth amendment of Law 46 of 1876, which empowered the Supreme Court to make as many orders in furtherance of justice as it might deem proper.

term he may state whether or not he has evidence to submit in the second instance.

900). ART. 152 of Law 105 of 1890. For the term of five days, referred to in the preceding article, the other parties shall be informed by edict of the receipt of the record by the Supreme Court or the respective Superior District Tribunal, for the same purpose as that stated, with regard to the Department of Public Prosecution, at the close of the preceding article; the Justice hearing the case shall likewise embody such a provision in his first order.

During the term of the edict the record shall be open to inspection in the office of the respective agent of the Department of Public Prosecution, to any of the other parties who may request it, but without its removal therefrom being permitted.

901.

901). ART. 153 of Law 105 of 1890. If private individuals only should be interested in the suit, the Justice taking cognizance of the cause shall direct that an edict be posted for five days, advising the parties of the receipt of the record in order that they may state whether they have any evidence to submit during such term; and in such case the parties shall examine the record in the office of the respective Secretary.

902). ART. 154 of Law 105 of 1890. Upon the expiration of the five days, if the record shall have been returned by the Department of Public Prosecution, the Secretary shall transfer it to the office of the Justice hearing the case with the petitions that both the Department of Public Prosecution and the other parties may have submitted during such term.

899, 900, 901, 903, second par.

903). ART. 155 of Law 105 of 1890. If none of the parties should have requested that the case be submitted for evidence, the record shall be ordered delivered to the parties, for six days each, in order that they may plead in writing.

If the number of parties should exceed three, the record shall be kept in the office of the Secretary for a term of eighteen days, at the disposal of the persons interested in order that they may examine it.

904). ART. 156 of Law 105 of 1890. Upon the expiration of the terms for the written pleadings, citation for judgment shall issue, and the said order shall fix a day for the public hearing, at which written pleadings may also be submitted. The date therefore cannot be less than four nor more than eight days, from the date of the citation for judgment.

903. Amended by Law 169 of 1896, article 21.

905). ART. 157 of Law 105 of 1890. Within thirty days after the last of the pleadings in the court room (*en estrados*), judgment shall be rendered, affirming, revoking or amending that at first instance, according as to whether such judgment does or does not conform to the law and the merits of the case.

33, 334.

906). ART. 158 of Law 105 of 1890. Upon the date set for the hearing it shall be opened by causing the judgment appealed from or consulted upon to be read by the Secretary. Thereupon the Justice presiding shall permit the appellant to address the court, and then the opposing party, until both shall have spoken twice. If both parties should have appealed from the judgment at first instance, the plaintiff in the suit shall speak, and then the defendant.

907. ART. 159 of Law 105 of 1890. If within the term of five days referred to in article 153,\* the parties or any of them should request that the proceedings be submitted for the taking of evidence, a decree to this effect shall be issued for a term not to exceed twenty days.

908). ART. 160 of Law 105 of 1890. The provisions of articles 958, 959 and 960,† of the Judicial Code, are common to the provisions of this Chapter, with regard to the testimony to be taken in a foreign country or within the Republic, at a distance of more than fifty miriameters from the residence of the Court or of the Tribunal; but the petition for a term in such cases must be made during the first half of the probatory term in the second instance.

909). ART. 161 of Law 105 of 1890. Upon the expiration of the probatory term, the Secretary shall so inform the Judge taking cognizance of the matter, placing the record at his disposal.

910). ART. 162 of Law 105 of 1890. Upon the termination of the probatory term, the Supreme Court and the Superior Tribunals have the power to make an order in furtherance of justice, for the purpose of elucidating the points which they may deem doubtful, and for the purpose of supplementing the evidence in order that right may not be sacrificed to forms. After compliance in all its parts with the order in furtherance of justice in the proceedings, another order of this kind cannot be made in the same proceedings, unless new facts which it is necessary to prove and which may have been suggested by the execution of the first order named, should appear.

Subrogated by the following:

911). ART. 18 of Law 100 of 1892.‡ The Supreme Court of Justice and

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\* Ordinal 901.

† Ordinals 876, 877, 878.

‡ This article subrogates ordinal art. 910. Both 910 and 911 were subrogated by art. 31 of Law 169 of 1896.

the Superior Tribunals may, before rendering judgment, make an order in furtherance of justice, for the purpose of elucidating points which they may consider doubtful and which it may be advisable to clear up. Upon the said order having been executed, another such order cannot be made, unless new facts shall appear which may have been suggested by the execution of the first order made.

912). ART. 19 of Law 100 of 1892. The order in furtherance of justice may be made in any case in which a definitive judgment upon a matter of contentious jurisdiction is to be rendered, or when a judgment having been invalidated by reason of an appeal for annulment of judgment (*recurso de casación*), it shall be necessary for the (Supreme) Court to render a judgment to replace that of the Tribunal.

913). ART. 163 of Law 105 of 1890. The proceedings which an order in furtherance of justice may decree, shall be had with a citation of the parties, in order that within a term of twenty-four hours they may adduce counter evidence. Such counter evidence and the proceedings decreed, shall be had within ten days, in addition to double the term for the distance, if to be had outside of the place where the proceedings are being held.

1601.

Amended by the following:

914). ART. 20 of Law 100 of 1892. The order in furtherance of justice interrupts the term for judgment, for not more than twenty days, in addition to double the term for the distance, when proceedings are to be had in a place outside of the place where the proceedings are being held.

The counter evidence referred to in article 163 of Law 105 of 1890, shall be taken within the term referred to in this article.

915). ART. 164 of Law 105 of 1890. If no order in furtherance of justice should be made, or in the event that such order having been made the testimony ordered by the Court or the Superior Tribunals shall have been taken, the provisions of articles 155 to 158\* of this Law shall be observed.

911 to 914.

916). ART. 165 of Law 105 of 1890. If nullities shall have been pleaded, or if they should appear on the face of the record, the Court or the Superior Tribunals shall first decide thereon, at any stage of the cause, in accordance with the provisions of Title VIII of this Law.

917). ART. 166 of Law 105 of 1890. If an appeal for annulment of judgment should be interposed in due time from a definitive judgment in second instance rendered by a Superior District Court, it shall be allowed, heard and decided in accordance with the provisions or articles 366 to 387 of this Law.

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\* Ordinals 903 to 906.

## TITLE X.

### Ordinary Actions upon Private Interests.

#### CHAPTER I.

##### *Preliminary provisions.*

918). ART. 981. Suits involving private interests, in which no interest of the Nation is at stake, and of which the Prefects and Corregidores of the national Territories take cognizance, are divided into actions of greater and lesser import. The former are those in which the principal involved exceeds three hundred pesos; and the latter those which do not exceed said amount. The principal interest is considered the total net amount sued for.

919). ART. 982. Suits upon complaints of greater import shall be heard by the Prefects in the manner provided in Chapter I, of the preceding Title, with regard to suits in which the Nation has an interest.

920). ART. 983. In case of an appeal, which is the only case in which the Federal Supreme Court can take cognizance of the rulings and judgments from which an appeal lies rendered by Prefects in the said suits upon complaints of greater import, said Tribunal shall hear and decide the appeal as provided in Chapter II of the preceding Title, for actions of a national character.

In the said actions between private individuals, a consultation does not lie in any case, nor shall the Department of Public Prosecution take part therein.

921). ART. 984. In actions upon complaints of lesser import, the Corregidores and Prefects shall conform to the provisions of the following Chapter.

922). ART. 985. The records in the actions referred to in this Title must be kept upon common paper.

#### CHAPTER II.

##### *Ordinary Actions upon a complaint of lesser import.*

923). ART. 986. Complaints of lesser import shall be made verbally to the Corregidor of competent jurisdiction, according to the general rules governing jurisdiction and competency.

This jurisdiction of the Corregidores is exclusively vested in them (*privativa*).

924). ART. 987. The complaint having been made, a statement thereof shall be written, showing: 1. The names of the defendant and

the complaint; 2. The thing, amount or act the subject of the suit; and 3. The reason for or the right under which suit is brought.

In the said statement or entry, the Corregidor shall direct that the defendant be cited to appear to make answer to the complaint upon the day and at the hour he may fix therefor.

The time for such appearance shall be fixed, taking into consideration the distance at which the defendant may be, and the nature and urgency of the complaint.

The complaint shall be served in the manner established by Chapter 6, Title I of this Book.

194 *et seq.*, 1601.

925). ART. 988. If any of the parties should legitimately excuse himself from appearing on the day fixed to answer the complaint, the Corregidor shall set a new day after the cessation of the impediment, and both parties shall be advised thereof. But if the impediment which the party may suffer from preventing his appearance should permit him to grant a power of attorney, he must make answer to the complaint through an attorney in fact.

926). ART. 989. On the arrival of the day and hour set for the appearance of the parties, if the complainant should fail to enter an appearance without a just excuse, and the defendant should appear, the latter shall not be obliged to answer the complaint, and the Corregidor shall tax the costs of the appearance of the defendant against the plaintiff, the amount thereof being estimated by such defendant under oath, and regulated by the Corregidor, if he should consider them excessive.

927). ART. 990. If the defendant should fail to appear on the day and the hour set for the answer to the complaint, the plaintiff may have recourse to the way of assent or proof in default, at his option, and in terms expressed in the respective Chapter.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

928). ART. 167 of Law 105 of 1890. If the defendant in an ordinary action upon a complaint of lesser import, should fail to appear upon the day and at the hour set for the answer to the complaint, or if he should appear and refuse to answer, the Judge shall avail himself of the compulsory process provided for in article 334\* of this Law. If even after the employment of such process the complaint should not be answered, the Judge shall submit the cause for the taking of evidence in order that the parties may present such proof as they may deem advisable; and he shall in due time render judgment in view of the pleadings and evidence sentencing the defendant, for failure to make answer to the complaint,

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\* Ordinal 1604.



to pay a fine of ten to one hundred pesos if the judgment should be for the plaintiff.

857.

929). ART. 991. In complaints not involving more than twenty pesos, upon the appearance of the parties the Corregidor shall hear both, shall examine the witnesses they may produce, shall consider the other evidence and the reasons they may adduce, and shall render judgment at once, which judgment shall be entered immediately after the complaint and a brief statement of all the proceedings had, the Corregidor, the parties and the Secretaries signing the same. From this judgment no remedy lies excepting a complaint, and it becomes, therefore, final, upon notification thereof to the parties.

930). ART. 992. The proceedings in the actions referred to in the preceding article, shall be written in a book composed of common paper, foliated and rubricated upon each page by the Corregidor and his Secretary. The parties shall be given such copies of said record as they may request, upon the order of the Corregidor.

931). ART. 993. In actions involving more than twenty pesos, if upon answer to the complaint, there should be no facts to be proved, judgment shall be rendered, after citation of the parties, within six days after the date of the answer.

If there should be facts to prove, and any of the parties should state that he has evidence which he wishes to introduce, the Corregidor shall grant for the purpose a term of eight days, which may be extended the time necessary for the round trip, if the testimony is to be taken in another place; the Corregidor shall for this purpose conform to the provisions of articles 957 and 958\* regarding ordinary actions of greater import; but in no case shall the probatory term granted and extended exceed one month.

14.

932). ART. 994. Upon the expiration of the probatory term, the Corregidor shall at once set one of the three days following with a statement of the hour for hearing or receiving the arguments which the parties may wish to present orally or in writing. If they should plead orally, the hearing can in no case exceed three days, three hours per day.

933). ART. 995. The same order setting a day for the arguments, shall cite for judgment, which judgment shall be rendered within the six days following the last of the arguments.

333, 334.

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\* Ordinals 875 and 876.

934). ART. 996. In the said actions involving more than twenty pesos, even though they should be heard orally, minutes shall be made of all the proceedings had, which minutes shall be signed by the Corregidor, his Secretary and the parties. The Judgment shall be written immediately thereafter, which after having been signed by the Corregidor and his Secretary shall be served upon the parties.

935). ART. 997. The judgments which the Corregidor may render upon the complaints exceeding twenty pesos in interest, may be appealed from to the Prefect of the Territory which appeal may be interposed at the time of receiving notice, or within forty-eight hours thereafter.

936). ART. 998. If the Corregidor should deny the appeal, the aggrieved party may apply for a writ of certiorari (*ocurrir de hecho*) to the Prefect in the terms prescribed in Chapter 2, Title VII of this Book.

937). ART. 999. The appeal having been allowed, the Corregidor, after citation of the parties, shall send the original record to the Prefect on or before the second day, if the latter should reside in the same place, or by the first mail at the cost of the appellant, if he should reside in another place.

938). ART. 1000. Upon the receipt of the record in the office of the Prefect, the Prefect shall set a day and hour to hear and receive the arguments of the parties, the latter being permitted, in the meantime, to introduce such evidence as they may deem advisable.

The day for the arguments shall be one of the six following.\*

939). ART. 1001. In the event of a petition for a writ of certiorari (*recurso de hecho*), if it should be granted, the Prefect shall address a communication to the Corregidor directing him to forward the record, after citation of the parties, in order that they may enter an appearance before the Prefect.†

940). ART. 1002. The Prefect shall render judgment within six days after the last argument.‡

941). ART. 1003. If the parties should plead orally, the hearing cannot cover more than three days and three hours each day.§

942). ART. 1004. Against the decision of the Prefect there shall be no remedy except a complaint, it becoming, consequently, final upon the parties being notified thereof.||

943). ART. 1005. The judgment having been rendered in the second instance, the Prefect shall return the original record to the Corregidor who rendered the decision in the first instance, retaining a full copy

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\* The procedure established by this article and the following of this Chapter, with the exception of articles 1004 and 1007, ordinal Nos. 942 and 945, have been substituted for that provided in articles bearing ordinal Nos. 946 to 956.

† Subrogated: See note to preceding article.

‡ Subrogated: See note to ordinal art. 938.

§ This article has been neither subrogated nor repealed.

|| Subrogated: See note to ordinal art. 938.

of the judgment in the second instance in a book which the Secretary to the Prefect shall keep for this purpose.\*

944). ART. 1006. Notice of the judgment at second instance shall be served in the Office of the Corregidor who rendered the judgment in the first instance, and the original record shall be filed there, of which, upon the order of the Corregidor, such copies as the parties may request shall be given them.†

945). ART. 1007. In actions upon complaints of lesser import, dilatory exceptions shall be passed on at the same time as the main issue, the proper order being observed in the judgment, so that, upon a dilatory exception being established, the Corregidor shall not enter upon a discussion of the main issue.‡

The following articles, Nos. 946 to 956 of order, subrogate arts. 938, 939, 940, 941, 943, and 944:

946). ART. 168 of Law 105 of 1890. Upon receipt of the process by the Circuit Court, an order shall issue, within twenty-four hours, directing that the parties be informed of the receipt of the record, which shall be made known by edict, which shall be posted during the working hours of a natural day.

947). ART. 169 of Law 105 of 1890. If an application for a writ of certiorari shall have been made, and the application granted, the Circuit Judge shall transmit a communication to the District Judge directing him to forward the record, after citation of the parties, in order that they may enter an appearance in the Circuit Court.

948). ART. 170 of Law 105 of 1890. Upon receipt of the record by the Circuit Court, the parties shall be notified thereof, in the terms prescribed by article 168.§

949). ART. 171 of Law 105 of 1890. If within three days after the notice, none of the parties should request that the cause be submitted for evidence, the Judge shall cite for judgment, which he shall render within the next ten days, affirming, amending or reversing that in first instance, and also adjudging the costs.

950.

950). ART. 172 of Law 105 of 1890. If within three days after the parties shall have been notified of the receipt of the record, one of them should request that the cause be submitted for the taking of evidence, the Judge shall grant the common period of eight days and that corre-

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\* Subrogated: See note to ordinal art. 938.

† Subrogated: See note to ordinal art. 938.

‡ This article has been neither repealed nor subrogated.

§ Art. 168, referred to herein, is ordinal art. 946.

sponding to the distance, if the testimony is to be taken outside the place where the action is being prosecuted.

1601.

951). ART. 173 of Law 105 of 1890. Within the probatory term, each party may introduce or request such evidence as he may deem advisable, and the Judge shall order it taken, citing the opposite party.

952). ART. 174 of Law 105 of 1890. Upon the expiration of the probatory term, the judge shall order that the record be referred to the parties, for four days to each, in order that they may make their closing arguments.

953). ART. 175 of Law 105 of 1890. Upon the expiration of the term of reference, citation for judgment shall issue, and within the next ten days judgment shall be rendered, affirming, amending or reversing that in the first instance, and adjudging the costs.

333, 334.

954). ART. 176 of Law 105 of 1890. If a plea of nullity should be made in these actions in the second instance, a decision thereon shall first be made. Otherwise they may be annulled only by reason of illegitimacy, representation and lack of jurisdiction.

955). ART. 177 of Law 105 of 1890. After the appeal shall have been decided by the Circuit Judge, or the process annulled and the decision published, all the proceedings had shall be sent to the Judge of first instance, a copy being retained of the judgment in a book which shall be kept for the purpose by the Secretary of the Circuit Court.

956). ART. 178 of Law 105 of 1890. In the office of the Judge who rendered the judgment in the first instance, notice of that in the second instance shall be served, and the original record shall be filed in such office, of which record, upon the order of the Judge, such copies shall be issued as the parties may request.

## TITLE XI.

### Special Actions.

#### CHAPTER I.

#### FIRST SECTION.

#### *Executory Actions.*

957). ART. 1008. When a legitimate party shall present to a Judge of competent jurisdiction a document or judicial act of those which in accordance with this Code, carry execution and a request is made for execution to issue to enforce the obligation expressed therein, the Judge, without either citing or hearing the debtor, must cause it to issue within twenty-four hours.

333.

#### THIRTIETH AMENDMENT.

(Of Law 46 of 1876.)

958). ART. 1009. For all legal purposes an executory action shall be understood to exist from the time the debtor is served with the writ of execution until payment is made to the creditor, or notice is served of the definitive judgment directing the absolute cessation of the execution.

959). ART. 1010. The following documents carry execution:

1. A final judgment.
2. A judgment which, although from its nature does not carry execution, must be executed notwithstanding an appeal, by reason of the latter having been granted in a devolutive effect only.
3. Writs issued in legal form by the Federal Supreme Court and by the Courts of First Instance, for the execution of a judicial act.
4. Public instruments.
5. Bills of exchange against the acceptors, against the endorsers, or against the drawers in their respective cases, according to the Code of Commerce.
6. Notes or simple I. O. U's, and in general private documents acknowledged by the debtor in legal form, or recorded in the public registration office by the debtor himself; and
7. A judicial confession made before the Judge of competent jurisdiction.

This article has been expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

960). ART. 179 of Law 105 of 1890. The following judicial acts and documents carry execution:

1. A final judgment, with the requisites determined by article 828 of the Judicial Code.\*

50 second par., 691, 692, 1446; Law 169 of 1896, article 23, which supplements this article, and art. 261, second par. of Book III.

2. A judgment which, although from its nature does not carry execution, must be executed notwithstanding an appeal, by reason of the latter having been granted in a devolutive effect only.

689.

3. Writs issued in a legal form by the Supreme Court, the Superior Tribunals and the Courts of First Instance, for the execution of a judicial act.

4. Public Instruments.

5. Bills of exchange against the acceptors, against the endorsers or against the drawers, in their respective cases, according to the Code of Commerce.

965. 830 to 834 of the Code of Commerce.

6. Notes or simple I. O. U's, and in general private documents acknowledged by the debtor in legal form, or recorded in the public registration office by the debtor himself; and

530, 539, 544.

7. A judicial confession made before the Judge of competent jurisdiction.

385, 964, 1083, 1065, 1059, 1060. Law 169 of 1896, art. 34.

961. ART. 1011. In order that the said documents may carry execution, they must be drawn and written with the legal formalities, and those which require registration in accordance with the laws, must furthermore, be recorded.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

962). ART. 180 of Law 105 of 1890. In order that the said acts and documents may carry execution they must be drawn and written with the legal formalities, and those which require registration in accordance with the laws, must, furthermore be recorded.

2652 of the Civil Code.

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\* Art. 828 of the Judicial Code is ordinal art. 691.

963). ART. 1012. Such documents do not import a confession of judgment, excepting in so far as an express, clear and past due obligation results therefrom, to pay a net sum, or to deliver or do a specific thing.

By net amount is understood that which can be expressed by a determinate figure without being subject to indeterminate although certain deductions.

15.

### THIRTY-FIRST AMENDMENT.

(Of Law 46 of 1876.)

964). ART. 1013. The following documents also carry execution in actions brought by the Agents of property relieved from incumbrance against tardy debtors:

1. Any authentic copy of a public instrument which has not been cancelled, establishing the debt and the conditions of payment thereof.
2. Any private document judicially acknowledged by the debtor.
3. All accounts against debtors to the branch that may be liquidated by the Agents, reference being previously made to the entries in the registry, and provided always that these were based upon information furnished by prior usufructuaries, or by prior entries appearing in the respective archives.

960, 1083.

965). ART. 1014. In order that a bill of exchange, draft or note endorsed may carry execution, it shall be sufficient that his signature be acknowledged by the party against whom, in a proper case, it may be necessary to employ executory process; but if within the proper term the execution debtor should oppose an exception of falsity of one of the endorsements, the genuineness of such endorsement must be established by the plaintiff within the probatory term granted in such an action.

960 subdivision 5. 830 to 836 of the Code of Commerce.

966). ART. 1015. The decree or writ of execution must contain:

1. The order of payment by executory process, with a statement of the net amount of the debt; and
2. The intimation of the debtor to appoint in due time a depositary and appraisers of the property belonging to him which is to be attached, with a notice that if he fails to appoint them upon notification, or appoints absent individuals, or persons who cannot or do not wish to accept, the Judge of the cause, or the commissioner, in a proper case, will appoint them.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

967). ART. 181 of Law 105 of 1890. The decree or writ of execution must contain:

1. The order of payment by executory process, with a statement of the net amount of the debt; and
2. An intimation to the debtor to appoint in due time a depositary and an appraiser of the property belonging to him which is to be attached, with a notice that if he fails to appoint them upon notification, or appoints absent individuals, or persons who do not wish to or cannot accept, the Judge of the cause or the commissioner, in a proper case, will appoint them.

976, 977, 979, 987, 1003 to 1008.

968). ART. 1016. Whenever execution is requested by virtue of a document which entitles to interest upon the sum for which it has been drawn, either by agreement or by provision of law, execution shall issue for the principal and interest to the day of payment, after the liquidation of the interest by the Judge of the cause or the commissioner in a proper case.

15.

969). ART. 1017. When the obligation to be executed is to deliver a determinate thing, the creditor on requesting the execution must under oath estimate the damages which he may suffer in the event of the non-delivery of the thing; and the Judge shall direct:

1. That the execution debtor deliver at once the thing demanded of him.
2. That if he does not deliver it, if it should be in his possession, the said thing be attached and deposited, and in addition, sufficient property to cover the costs; and
3. That if the thing should not be in possession of the execution debtor, it be attached in the possession of whosoever may have it, or sufficient property be attached to cover the value of the damages incurred by the failure to deliver said thing, at the option of the execution creditor.

Expressly repealed by art. 338 of Law 105, and subrogated by the following:

970). ART. 182 of Law 105 of 1890. When the obligation to be executed is to deliver a determinate thing, the creditor, on requesting the execution, must under oath estimate the damages which he may suffer in the event of the non-delivery of the thing; and the Judge shall direct:

1. That the execution debtor deliver at once the thing demanded of him;



2. That if he does not deliver it, if it should be in his possession, that the said thing be attached and deposited, and, in addition sufficient property to cover the costs; and

3. That if the thing should not be in the possession of the execution debtor, sufficient property be attached to cover the value of the damages incurred by the non-delivery thereof.

If the thing should be in the possession of a third person, it may be attached if the execution creditor gives bond to answer for the damages which the real owner of the thing may suffer, if it be decided that it belongs to said third person.

984, 903 to 1002.

971). ART. 1018. If the obligation should be to do something or perform a determinate act, the damages shall be estimated under oath, as in the case of the preceding article, which may be incurred through the non-performance of said obligation, and the execution creditor may demand one of two things, at his option: either the performance of the act by the debtor, or indemnity for the damages caused by the violation of the contract.

If the former should be demanded, the Judge in issuing the execution shall fix a reasonable term for the performance of the obligation, and shall order that in the event of its non-performance within this term by the execution debtor, property of his be attached in order to cover with the value thereof the damages estimated by the execution creditor.

If the latter should be demanded, the execution must be issued directly for the payment of the amount at which the damages may have been estimated, there being taken into consideration in the regulation which may be made of such damages, in accordance with the following articles, that if the act could still be executed, or the thing be done at the time the execution was requested, the indemnity must be reduced to what said thing would cost through a third person, and to the damages arising from the delay.

In the event that the execution creditor should request the performance of the act or principal obligation, he may also demand the indemnity for the damages which may be caused him by the delay to the day upon which it may be performed, which damages he shall estimate under oath, and which the Judge must decree in accordance with the provisions of the first paragraph of article 1015 and the first case of this article.\*

972 to 975.

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\* As has been stated, article 1015 cited. Ordinal art. 966 was expressly repealed by art. 338 of Law 105 of 1890, and subrogated by ordinal art. 967, whose subdivision 1, is that applicable.

972). ART. 1019.<sup>1</sup> An execution having been decreed for the payment of the damages estimated under oath, after service of the writ, and the attachment of property sufficient for the payment, and before citation for sale issues, the execution debtor may object to the estimation made by the creditor, before the Judge of the cause, and the latter in such case shall not issue the citation for the order of sale, until the regulation referred to in the following article is made.

Amended by the following article:

973). ART. 199 of Law 105 of 1890. The objection referred to in article 1019\* of the Judicial Code, may be made as soon as service of the writ of execution is made on the debtor. If the objection should be made, a separate record shall be kept and the course of the action as to the principal matter shall not be stayed.

974, 975.

974). ART. 1020. An objection having been made by the debtor against the estimation of the damages, the Judge shall direct that they be regulated by experts appointed by the execution creditor and the execution debtor, or by the Judge, in the terms prescribed by Chapter VI, Title II of this Book.

975). ART. 1021. The provisions of the four preceding articles shall not apply when in the documents by virtue of which the execution may be decreed, the amount of damages to be paid in the event of the non-delivery of the thing, or the non-performance of the act the subject of the obligation, should have been fixed, as in such case what is stated with regard to said damages in the document, must be observed.

976). ART. 1022. The name of the debtor, which the decree or writ of execution must contain, shall be that resulting from the document by virtue of which the writ issues, unless the obligation should arise from a rent charge (*censo*), or it is desired to foreclose a mortgage, as in such case the execution debtor shall be the person who may be designated by the execution creditor, under his liability, as the actual possessor of the estate subject to the rent charge or mortgage, without prejudice to the provisions of article 1051.†

967.

977). ART. 1023. For the fulfillment of the writ of execution, the Judge of the cause may commission a District Judge, excepting in the case of the following article:

980, 981.

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\* Ordinal 972.

† Art. 1051 referred to herein, is ordinal art. 1021.

978). ART. 1024. If the creditor, in the petition requesting that his debtor acknowledge the document, should also request that, upon its acknowledgment, execution issue, the Judge, upon such acknowledgment being made, without permitting the debtor to absent himself, shall decree the execution if he were of competent jurisdiction and the document should furnish grounds therefor, and shall at once take as many other steps in the executory proceedings as may be possible.

960, 981.

### THIRTY-SECOND AMENDMENT.

*(Of Law 46 of 1876.)*

979). ART. 1025. The execution debtor may appeal from the order of execution in the same proceeding by which notice is served on him, or in separate petition, within the next forty-eight hours. The appeal shall be allowed in a devolutive effect; but no property shall be sold nor any citation for announcement and sale be issued before the execution Judge shall receive the decision which the superior may have rendered by virtue of the appeal allowed.

1070, 1071, 1072, 1024.

980). ART. 1026. If the proceedings mentioned in the following article are to be had through a commissioner, the Judge of the cause shall order that the proper communication be issued at once, which may be delivered to the execution creditor, who without the necessity of a petition, shall present it to the Judge commissioned.

The Judge issuing the commission shall fix the term within which the Judge commissioned is to execute his commission; this term shall begin to be counted from the day upon which the communication may be presented to the commissioner, which date shall be recorded by means of a note made by the Secretary, which shall be subscribed by him, the execution creditor and a witness.

357.

981). ART. 1027. The Judge of the cause, when acting in person, or the commissioner, in a proper case, has the following duties:

1. To personally notify the debtor of the writ of execution, which proceeding shall be signed by the execution Judge, his Secretary and the execution debtor, a witness doing so in the place of the latter, if he should not know how, not wish or not be able to sign.

212, 214, 988.

2. Require of the debtor that at the time of the notice he pay what is demanded of him, in accordance with the provisions of the writ of execution.

3. In the event of non-payment, to require of the debtor that he state, under oath, whether or not he has property with which to pay what he may be sued for and the costs of the action, and what property he presents for the purpose.

4. If he should present property, to require him to furnish a warrantor to the satisfaction of the creditor.

982, 983, 984, 986, 1010, 1065, 1100, 1101.

5. To attach at once the property which the debtor may indicate in the manner stated, deposit it, and cause it to be appraised at the proper time by expert appraisers appointed by the parties or by the said execution Judge, in accordance with the provisions of Chapter IV, Title II, of this Book.

1092, 1093, 1098, 1099, 1102, 1103, 1138. Law 95 of 1890, art. 42.

6. If the execution debtor should not pay nor produce sufficient property to cover the debt and the costs, furnishing the proper bond, to attach, deposit and direct the appraisal of the property which the creditor may denounce as belonging to the debtor, first swearing not to act with malice; and\*

7. To issue all the orders necessary for the suspension of the payment of any salary, deposit, pension, income, or amount due the defendant, and which he may have made known or which the creditor may have given information of, availing himself of the right granted in the preceding paragraph.

991, 1102, 1103.

The three articles which follow are supplemental, the last being, in addition, amendatory.

982). ART. 183 of Law 105 of 1890. The bond in warranty shall be constituted in the executory proceedings, by means of a certificate or minute stating all that may be pertinent to the case, signed by the Judge, the surety and the Secretary of the court.

983). ART. 184 of Law 105 of 1890. The warrantor referred to in subdivision 4 of article 1027 of the Judicial Code, shall be furnished to the satisfaction of the Judge taking cognizance of the proceedings, who shall require the necessary evidence to establish that the requisites prescribed by the Civil Code are present in the surety.†

\* Expressly repealed by art. 338 of Law 105, and subrogated by ordinal art. 984.

† Article 1027 referred to herein is ordinal article 981.

984). ART. 188 of Law 105 of 1890. If the execution debtor should not pay or not produce sufficient property to cover the debt and cost, furnishing the proper bond, the Judge shall proceed to attach, deposit and cause the appraisal of the property which the creditor, upon swearing not to act with malice, shall denounce as the property of the debtor, in the event that the property should be in the possession of the latter.\*

970 last par., 986, 993, 996, 1000, 1031.

985). ART. 1028. In order to estimate whether the property produced or denounced is sufficient to cover the debt and the costs, the Judge shall make a reasonable estimate of what the costs may amount to by the end of the proceedings, reserving a final liquidation in due time.

He shall also estimate the sum to which the interest, allowances, fruits, fines and other products may amount which, as accessories or principals, must be liquidated to the day of payment, without prejudice to the final liquidation.

Expressly repealed by art. 338 of Law 105 and subrogated by the following:

986). ART. 185 of Law 105 of 1890. The purpose of the bond in warranty is that the property produced or denounced be estimated as sufficient, and that consequently, more property of the debtor be not attached, unless the creditor shall present evidence establishing the insufficiency of such property. In such case the new property which may be denounced at any time shall immediately be attached, and after having been attached, the sufficiency of the property originally produced or denounced shall be passed on as an incidental issue.

981, subdivision 4, 1063, 1119, 1143.

987). ART. 1029. If the property to be deposited should consist of industrial establishments or estates, from the management of which the owner could not be removed without a serious disturbance in the works, a receiver (*interventor*) shall be appointed in the place of a depositary. Both the receiver and the depositary, shall perform the duties mentioned in § 2 of Chapter 5, Title I of this Book.

967 subdivision 2, 1003, 1093.

988). ART. 1030. When the execution shall issue against a juridical person, community, industrial or commercial company, against a minor or an absentee to whom a curator *ad bona* may have been appointed, a spendthrift, an insane person or one deaf and dumb, deprived by a judicial decree of the administration of their property, or against a vacant or

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\* This article subrogates subdivision 6 of ordinal art. 981; which subdivision was expressly repealed by art. 338 of Law 105 of 1890.

undivided inheritance, notice of the respective order shall be served upon their respective representatives, and all proceedings had shall be served upon and conducted with such persons to the end of the action.

989). ART. 1031. If the property produced or denounced by the execution creditor or execution debtor should be in the possession of a third person, who claims it as his own at the time it is about to be attached it shall be attached in his possession and left with him, provided that security to the satisfaction of the Judge be furnished to deliver it in the condition in which it may be at the time the attachment was levied, and with all the fruits thereof, if he should state that they do not belong to him. The same shall be done if the attachment and deposit proceedings are not had with the third possessor in person, and the latter makes the claim referred to, at any stage of the proceedings before the public sale, on or before the third day after he may have been personally notified of the attachment. The question of ownership shall be heard and decided in an action of intervention without prejudice to the attachment of other property of the execution debtor, on the petition or by denunciation of the execution creditor.

This question shall be heard and decided in an action of intervention without prejudice to the attachment, on the petition or by the denunciation of the execution creditor, of other property of the execution debtor.\*

990). ART. 1032. When the property to be attached in the case of the preceding article, in its first part, should be consumable, the bond shall be to secure the return of a like amount of property of the same class and to the same amount as that attached.\*

991). ART. 1033. When debts are to be attached which are not as yet due or other similar rights, the attachment and the deposit shall be confined to a direction to the respective person obligated, to deal with the depositary appointed, as the only representative of the execution debtor, as to the debtor right attached. The depositary shall be given notice of this direction, and the titles establishing the right, shall be delivered to him, if they can be found.

981, subdivision 7.

### THIRTY-THIRD AMENDMENT.

(Of Law 46 of 1876.)

992). ART. 1034. When property not in the possession of the execution debtor should be denounced, the ownership of the latter therein must be summarily proved in order that the attachment may be ordered.

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\* Expressly repealed. See note to ordinal 992.

Paragraph nine. The denunciation of the suit may be made in these proceedings in the same manner as in ordinary actions. The denunciation shall be made within twenty-four hours after service of notice of the decree of execution.\*

993). ART. 189 of Law 105 of 1890. If at the time of the deposit of the property denounced by the execution creditor or confessed by the execution debtor, it should be in the possession of a third person who claims it as his own—which claim may be made verbally—it shall be attached in his possession and left with him as a deposit. When this takes place, if the execution creditor should insist upon continuing the execution upon such property, he shall so state within six days, and at the same time he shall present a solidary surety having the qualifications referred to in article 103 of this Law, in order that he may answer for the damages which the third possessor of the property may be obliged to suffer, by virtue of the attachment and the consequent proceedings, in the event that it should be declared that such property belongs to said possessor. If within the six days mentioned, the execution creditor should not insist upon his claim, or should fail to furnish the surety within a term of six days more, the attachment on the property shall be raised and the deposit shall cease.†

970 last par., 984, 994 to 1002.

994). ART. 190 of Law 105 of 1890. The third possessor referred to shall enforce his rights, in accordance with the laws, within thirty days after the execution creditor shall have furnished the bond; and in the event that it should be necessary for him to bring a suit in intervention, in accordance with the provisions of article 204, he shall do so within six days after the decision upon the incidental issue shall become final.

Said third possessor is not obligated to furnish a bond for the costs in the suit in intervention which he may bring.‡

737, 742, 993, 995, 999, 1000, 1031.

995). ART. 191 of Law 105 of 1890. If the execution creditor should insist upon the execution, the third possessor shall upon the petition of the latter or of the execution debtor, be required to furnish a surety having the qualifications aforementioned, within six days, to answer that the possessor will deliver the property in the state in which it was at the time attachment was levied, if it should be decided that such property does not belong to him.

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\* This article as well as ordinal arts. 989 and 990 have been expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following of Law 105: ordinal arts. 993 to 1002.

† Art. 103 herein referred to is ordinal article 737.

‡ Art. 204 herein referred to is ordinal art. 1031.

If the property should be consumable, the purpose of the bond shall be to secure the return of a like amount of property of the same kind and to the same amount as that attached.

If the possessor should not furnish the surety, the property shall be turned over to a depositary to be appointed by the Judge.

993.

996). ART. 192 of Law 105 of 1890. If at the time the deposit of the property is made it should be in the possession of another who claims to hold it as an employee, overseer (*mayordomo*) or manager of a person other than the execution debtor, or in the name of said other person, as lessee, usufructuary, borrower for use, etc., the attachment ordered shall subsist, the thing shall be provisionally deposited with the person in whose possession it may be, and the summons of the possessor thereof shall be ordered to enter an appearance for the enforcement of his rights.

The same method shall be observed when the property denounced consists of realty and should be in the possession of the debtor himself, if the latter should produce summary and sufficient evidence to the effect that he is the mere holder of said property.

997). ART. 193 of Law 105 of 1890. The citation referred to in the preceding article shall be made by means of writs of citation, drafted upon ordinary paper, authorized by the Judge and the Secretary. One writ shall be delivered to the person in whose possession the thing may be; another shall be sent by a Police Agent, or by mail, to the individual designated by such person as the possessor of the thing, and another shall be addressed to any known member of the family of said possessor. Upon the expiration of six days next after the issue of these writs, of which fact the Secretary shall make an entry upon the record of the case, the deposit of the property shall be made in the care of the person of the depositary appointed by the execution debtor, if said third possessor should not have entered an appearance for the purpose of enforcing his rights.

998). ART. 194 of Law 105 of 1890. If the said possessor should enter an appearance at any time, before the sale and claim the property attached as his own, the provisions of articles 189 to 191 shall be observed.\*

996.

999). ART. 195 of Law 105 of 1890. The real possessor of the property attached and deposited, who may not have been summoned by reason of his existence being unknown, may also appear at any stage of the executory action, before the public sale, in order to enforce the rights referred

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\* Arts. 189 to 191 herein referred to, are ordinal arts. 993 to 995.



to in the preceding articles; but in order to be heard, he must present summary and sufficient evidence to establish that he was the regular possessor of such property the day the attachment thereof was ordered.

1000). ART. 196 of Law 105 of 1890. On the petition of the regular possessor of realty attached in an execution, the Judge shall order the attachment to be raised, as well as the cancellation of the respective proceeding and the delivery of the realty to the claimant, if it should not as yet have been sold, if the possessor present the registered title thereto and the certificate mentioned in art. III.

In such case, it must appear that the date of the actual registration is prior to that of the denunciation of the realty by the execution creditor or to that of the indication thereof by the execution debtor, without the Judge shall not order the attachment to be raised.\*

1001, 1031.

1001). ART. 197 of Law 105 of 1890. In the case of the preceding article, the execution creditor as well as the execution debtor, may bring a suit against the third possessor, in the executory action, in order that a judgment may be rendered declaring that said third possessor is not the owner of the immovable which he may have claimed. The said suit shall be heard and decided in accordance with the procedure in ordinary actions, and if a judgment be rendered in the first instance against the possessor, the immovable shall be attached; but it shall be left on deposit with the said possessor if the latter should so request, after furnishing the bond referred to in article 191.

If the possessor should not make the claim referred to within six days after receiving notice of the judgment, or should fail to furnish the bond within the term which the Judge may fix, the immovable shall be deposited with a depositary appointed by the Judge.

The judgment in the last instance having become final, if against the possessor, the immovable shall be sold at public auction, if proper, after the attachment and deposit thereof, if by reason of the judgment in the first instance having been favorable to the possessor, such immovable should not have been attached or deposited.†

1002.

1002). ART. 198 of Law 105 of 1890. If the judgment in the first instance should be against the possessor and in favor of a person other than the execution debtor, who may have become a party to the action, the attachment and deposit mentioned shall not take place, nor shall the estate be sold, if the judgment in the last instance should recognize a right

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\* Art. 111 referred to herein, is ordinal art. 745.

† Art. 191 referred to herein, is ordinal art. 995.

in the said thing in said person or another person, not the execution debtor.

1003). ART. 1035. One depositary only shall be appointed for movable property situated in one place; but if such property should be in different places, or if real estate is to be attached, a depositary may be appointed for the movable property in each place, and one for each of the estates.

987.

1004). ART. 1036. The appointment of a depositary shall be made by the execution debtor, excepting when he shall fail to appoint him at the time of notice of the order of execution, or should appoint a person who does not wish to or cannot accept, or should not reside in the place of the action, in which cases said appointment shall be made by the execution Judge.

987.

1005). ART. 1037. When in the opinion of the Judge the responsibility or means (*abono*) of the depositary appointed by the execution debtor should not be well known, he shall, on the petition of the execution creditor, require him to furnish a bond to the satisfaction of the said Judge, to faithfully perform the duties of a depositary. If said bond being demanded it should not be furnished within the time which the Judge may fix, the depositary shall be understood as removed by such fact.

1006, 1007.

1006). ART. 1038. The depositary shall also be removed, even though he shall have furnished the bond referred to in the preceding article, and even though he should have been appointed by the Judge, if the execution creditor and the execution debtor should so request, or one of them only, provided that in the latter case the person making the request should submit evidence, even though of a summary character, showing that the depositary does not properly administer the deposit.

1007). ART. 1039. The execution debtor shall appoint the depositary who is to take the place of the one removed, unless he shall fail to make such designation at the time of receiving notice of the order of the Judge directing him so to do, or unless he shall appoint an individual who should not wish to or be unable to accept, or should not reside in the place where the action is being prosecuted, as in such case he shall be appointed by the Judge.

1008). ART. 1040. The Judge of the cause may authorize the depositary to dispose of the consumable things deposited, under the obligation

of returning a similar amount of the same quality as those received, as is the case with the deposit of money, according to the substantive laws.

1009). ART. 1041. The warrantor answers that the property attached belongs to the debtor, and that with the proceeds from the sale thereof deducting any charges thereagainst, the debt and the costs shall be paid, obligating himself in a contrary event to pay what may be lacking.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

1010). ART. 186 of Law 105 of 1890. The warrantor shall answer that the property offered or denounced belongs to the debtor, and that, with the proceeds of the sale thereof, after deducting any charges thereagainst, the debt and the costs will be paid.

981, subdivision 4.

1011). ART. 1042. The order in which the attachment of the property produced by the debtor, or denounced by the creditor, is to be made is the following:

1. Cash (*dinero sonante*).

1032.

2. Movable property.

3. Real property.

4. One-half the salary, or of the income or pension which the execution debtor may enjoy from his office, trade or profession, or any other source.

1033.

5. The credits which the debtor may have in his favor, preferring those whose collection is the easiest, in the opinion of the creditor; and

6. Any other thing which may be denounced or shown to be the property of the debtor.

1012, 1013, 1035.

1012). ART. 1043. The order established in the preceding article may be changed at the will of the creditor whenever there is no cash money with which to pay the sum sued for; and it is also optional with said creditor that less than one-half the salary, or of the income or pension enjoyed by the execution debtor be attached.

1013). ART. 1044. If there should be property specially mortgaged for the payment of the debt, it shall be attached before any other property, unless there should also be cash on hand, which shall always be applied before anything else.

But as soon as it shall appear that the mortgage is insufficient, the execution may be extended to other property.

1014). ART. 1045. When the execution is levied upon a thing specially liable for the payment of the debt by reason of an express or implied mortgage, the notices shall be served upon the debtor obligated, if he can be found, and otherwise, upon counsel who shall be appointed to fulfill the formalities in the proceedings, and defend the mortgage in so far as necessary.

1015, 1021, 1016, 212, 213, 214, 976.

1015). ART. 1046. If the thing attached as specially subject to the payment, should consist of a vessel, the attachment and public sale of which may have been requested for the payment of the crew, sums secured by reason of a bottomry loan, or any other debt which legally affects her, the notices for all the purposes of the action shall be served upon the captain, the owner or the consignee, if they should desire to appear, and otherwise, upon a counsel, as in the case of the preceding article.

1016). ART. 1047. A counsel (*defensor*) properly discharging the duties referred to in the two preceding articles, is entitled to compensation for his services, which compensation shall be fixed at a reasonable sum by the judge, and it shall be deducted as costs, from the proceeds of the sale of the thing levied on.

The following article is additional:

1017). ART. 200 of Law 105 of 1890. When real property shall have been attached in an executory action, the public shall be given notice of the attachment by means of an edict which shall be posted in the office of the Secretary of the Court, in the same place which is set aside for the posting of the edicts referred to in article 223 of this law. Said edict shall indicate the following: the executory action in which the attachment was ordered, the names of the parties, the location of the real property attached, its bounds and its name, if known. Said edict shall also cite those believing themselves entitled to a right in the real property, in order that they may appear to enforce it in an action in intervention. The edict shall remain posted for thirty days, and a copy thereof shall be published three times in the official periodical of the respective Department, from the date of the posting of the edict.

The course of the executory action shall not be suspended during the thirty days referred to in the preceding article, but the sale shall not take place before the expiration of said term.

1018). ART. 1048. The following property of the execution debtor cannot be levied on:

1. One-half the salary, income or pension which he may receive from his office, trade, profession, or from any other source.

2. His bed, bedstead and bedding (*lecho*), those of his wife, those of his children living with him and at his cost, and the clothing used by all of these persons.

3. The books of his profession to the value of two hundred pesos, and at the selection of the said debtor.

4. The machinery and instruments which he uses for instruction in any science or art, up to said value, and subject to the same selection.

5. His military uniforms and equipment, according to his arm and rank.

6. His tools as an artisan or farmer, if the debtor be either.

7. Articles of food and fuel in the possession of the debtor to the amount necessary for the consumption of the family for one month, and

8. The personal rights of use and habitation possessed by the debtor.

1023, 1092. 1677 of the Civil Code.

1019). ART. 1049. The donation or bequest of a thing to the debtor under the condition of its not being subject to attachment, shall not be an obstacle to its attachment in an executory action.

1020). ART. 1050. Privates in the army, and persons living from the product of their material industry or labor, can have their wages attached only in so far as they exceed twenty-five cents.

1021). ART. 1051. When the amount sued for should be due under a rent charge (*censo*), the estate subject thereto only shall be attached; unless the personal action should be brought which is granted the *cen-sualista* by the substantive laws.

976, 1014.

1022). ART. 1052. If the thing attached should not consist of money, nor an annual income after the attachment thereof it shall be appraised by the appraisers appointed.

If it should consist of credit in favor of the execution debtor, they shall be estimated in accordance with their degree of solvency, in the opinion of the appraisers.

The securities of the public debt shall be appraised according to the price at which they are quoted on the exchange.

1098, 1099.

The following article is supplemental:

1023). ART. 201 of Law 105 of 1890. Upon the attachment of an estate in an executory action, it cannot be attached in another as long as the original attachment subsists, and if so attached, the last attachment is null *ipso jure*.

1024). ART. 1053. Upon the proceedings prescribed in the preceding articles having been had by the Judges of the cause, or returned by the

commissioner, in a proper case, and attached to the record, the Judge shall at once issue an order directing the citation of the execution debtor for judgment ordering the announcement and sale of the property attached (*para sentencia de pregon y remate*).

Within seventy-two hours after notice of this order, the execution debtor may plead the following exceptions:

1. Falsity of the executory instrument.
2. Nullity of the same.
3. Fictitious contract.
4. Fear of force sufficient to annul the contract.
5. Fraud which gave rise to the contract.
6. Novation of the contract.
7. Payment.
8. Set off by another liquidated debt, already due.
9. Transaction.
10. Promise or agreement not to demand.
11. *Res judicata*.
12. Prescription.
13. Pending bankruptcy proceedings.
14. Incompetency of jurisdiction.
15. Illegitimacy of representation on the part of the plaintiff, and
16. Error in the account.

285, 1027, 824, 827, 834, 1026, 1028, 1085, 1128, 1129. Art. 26 of Law 169 of 1896 is amendatory. Art. 69 of the last named law declares this article to be expressly amended.

1025). ART. 1054. When a judgment is the executory instrument, an exception pleading nullity is not admissible, if such nullity should not have been declared in the proceedings in which said judgment shall have been rendered.

Expressly repealed by art 338 of Law 105 of 1890, and subrogated by the following:

1026). ART. 202 of Law 105 of 1890. When an execution shall be levied by virtue of any of the instruments mentioned in the first three numbers of article 179 of this Law, no exceptions shall be admissible but those of nullity and those arising from facts which shall have occurred after the rendition of the judgment or of the order whose execution is in question. In other cases, the execution debtor may oppose, in addition to the exceptions referred to in article 1053 of the Judicial Code, as a peremptory exception, any act by virtue of which the laws ignore the existence of the obligation or declare it to be extinguished if it ever existed.\*

285.

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\* Arts. 179 and 1053, referred to herein, are ordinal arts. 960 and 1024 respectively.

1027). ART. 1055. If the execution debtor should avail himself in due time of the right granted him by article 1053, the Judge shall hear evidence upon the incidental issue of the exceptions from both sides for fifteen days, which cannot be extended, upon the expiration of which the Judge shall order that the papers be referred for three days each to the execution debtor and the execution creditor; upon the expiration of the same and after citation, he shall render judgment within eight days after the citation, declaring whether the exceptions interposed are or are not sustained, and ordering the execution to cease and the property attached to be released, in the first case, or ordering the sale thereof in the second.\*

1028, 333, 334, 1032 to 1035, 1094, 1098, 1101.

1028). ART. 1056. The Judge must likewise render judgment, even without the necessity of a new citation, directing that the execution and sale of the property be proceeded with, if within seventy-two hours after the citation for judgment of sale, the execution debtor should not have opposed any exception of those which the law permits.

1024 first par., 1094.

The three following articles are supplemental:

1029). ART. 203 of Law 105 of 1890. At any stage of the proceedings the payment or performance of the obligation may be pleaded, upon the production of the document establishing such fact. If payment should be declared not to be established, nor the performance of the obligation, the costs shall be taxed against the execution debtor, who cannot again raise the same issue.

Supplemented by the following:

1030). ART. 36 of Law 100 of 1892. In issues upon the payment in an executory action, referred to in article 203 of Law 105 of 1890, the evidence of witnesses shall not be admissible; both in raising and deciding them, written documents only or preconstituted evidence can be considered.†

1031). ART. 204 of Law 105 of 1890. Any person other than the execution debtor may claim as his own, summarily, the property belonging to him which may have been attached in an execution. Such petition shall be heard and decided as an incidental issue, and shall be referred to the execution creditor as well as the execution debtor. If the petitioner should fully establish his right, the property attached shall be released; should he fail to establish it, it shall continue subject to attachment, but may be claimed in an action of intervention. The

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\* Art. 1053 referred to herein, is ordinal art. 1024.

† Art. 203 cited, is ordinal article 1029.

property referred to may again be denounced in the same execution, if subsequently to the decision upon the incidental issue it should have been acquired by the execution debtor, and it shall be attached if the denouncing party shall present the evidence required by the law to establish the acquisition of the ownership of the thing in question. The preceding provisions are without prejudice to the provisions of article 196 of this Law.\*

1000.

1032). ART. 1057. If the attachment should have been levied upon cash, upon the judgment of sale against the debtor, the Judge shall order that the sum due the creditor be delivered to him.

1033). ART. 1058. If a salary, income or pension should have been attached, the Judge shall order in the judgment of sale, that the proper writ be issued directing the delivery to the creditor of the amount retained, and that thereafter there be delivered to him what is to be withheld from the debtor, until the sum which he may have been adjudged to pay shall have been covered.

1098, 1101.

1034). ART. 1059. If the thing attached should consist of something specific, by reason of such thing being that which is to be delivered to the creditor, an order shall be made in the judgment of sale directing the delivery of said thing, and that the property destined to the payment of the costs should be announced and sold at auction.

1014.

1035). ART. 1060. If the attachment should have been levied upon other property, the public shall be informed of the date of the sale thereof, which date cannot be set for a day less than eight days after the date of the announcement, if movables or incorporeal things should be involved; nor eighteen days, if real property is in question.

If the movable property attached should consist of perishable articles, the Judge may in his discretion reduce the time which is to intervene between the announcements and the sale.

1032, 1033, 1034, 1094 to 1097.

1036). ART. 1061. The announcements shall be made by means of posters, which shall state the day of the sale and the property to be sold, with a notice of the appraised value thereof.

The announcements shall also be made through the press, if there should be any in the place where the sale is to take place.

1038, 1040, 1041, 1045, 1095.

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\* Art. 196 referred to herein, is ordinal art. 1000.



The following article is additional:

1037). ART. 211 of Law 105 of 1890. Upon the same day that the sale is to take place it shall be made known by means of the preparatory announcements to be made by the criers (*pregones*) which shall be made two hours before the sale is to be held, at an interval of one hour between each such announcement. Upon the arrival of the hour for the sale, such time shall be announced, as well as the bid offered, the subsequent raises, by means of announcements by the crier, as well as the adjudication in the sale.

1038). ART. 1062. The Secretary is specially liable for the execution of the provisions of the two preceding articles, and for the posters remaining affixed and legible for the time set. The proper entry shall be made upon the record of such observance, stating in what places and in what periodicals the notices were posted and inserted.\*

1039.

1039). ART. 1063. If the notices should be removed, torn, erased or their reading made impossible in any other manner, the Judge of the cause shall punish by arrest or fines such contempt of his authority, as such acts are to be so considered.

1040). ART. 1064. If all or part of the property to be sold should be situated in a district other than that in which the sale is to be held, the Judge of the cause shall write a communication to one of the Judges of the District in which the property may be situated in order that he may also post edicts for six days, in the terms indicated. The sale cannot be held without a record of this having been done.

1095.

1041). ART. 1065. The Judge of the cause may also, on the request of any of the parties, issue a writ empowering one of the Judges of the district in which some of the property may be situated, to proceed with the sale thereof at public auction, for which purpose he must transmit therewith a copy of the appraisal of such property, fixing the days for the announcements by crier and for the sale.

In such case, the announcements must be posted not only in the place where the proceedings are being had but also in the seat of the District where the property is to be sold, with the requisites and for the term prescribed in article 1060 for each kind of property.†

1035 to 1038, 1095, 1096.

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\* The two preceding articles referred to herein are ordinal articles 1035 and 1036, as 1037 has been incorporated.

† Art. 1060 cited herein is ordinal art. 1035.

1042). ART. 1066. The sales shall be held before the Judge of the cause, between ten A. M. and four P. M. The time at which bids will be accepted, shall be stated in the announcements.

In no case can the Judge or his Secretary purchase the property placed on sale.

The two following articles are additional, and the second one is, in addition, amendatory.

1043). ART. 210 of Law 105 of 1890. Every sale shall be held within the hour that, in accordance with the provisions of art. 1066 of the Judicial Code, may have been fixed as the last admissible for the acceptance of bids; the last instant thereof should not be awaited. During said hour raises and counter raises shall be admitted, and the Judge shall award the sale at the moment he may deem proper, within the hour, first announcing that he is going to adjudicate it.\*

Amended by the following:

1044). ART. 16 of Law 100 of 1892. When a sale is to be held, only the hour when the bidding is to commence shall be fixed; after such bidding shall have commenced, the Judge cannot close the sale until three hours shall have passed.

1045). ART. 1067. The real property shall be designated by its situation, boundaries and other circumstances permitting of its precise location being known. The bidders shall be furnished both with regard to the real property and the movable property, all the information they may desire, which it may be possible to furnish them.

1036, 1054.

1046). ART. 1068. In order to obtain greater returns from the sales, the realty may be divided into sections, if such division should be practicable; and the movable property may be grouped into lots and classified in the most convenient manner. Any indication made in this respect by the parties, shall be considered by the Judge, the indications of the execution debtor being given the preference.

1047). ART. 1069. At every auction the sale may be made for two-thirds the appraised value, and the creditor is a competent bidder.

1057, 1062. Law 169 of 1896, article 22, is important.

The three articles which follow, are additional:

1048). ART. 207 of Law 105 of 1890. At every public sale held as a result of judicial proceedings, the bidder must, in order that his bid may be admissible, consign (deposit) five per cent of the appraised value of the estate.

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\* Art. 1066 cited herein is ordinal art. 1042.

The bidder failing to comply with the obligations imposed upon him by the laws, shall lose the five per cent consigned. One-half of this five per cent shall belong to the execution creditor, to whom it shall be delivered at once. The other half shall accrue to the property of the execution debtor destined to the payment, and shall also be delivered to the execution creditor, to be imputed to the interest due and after the respective liquidation which the Judge of the cause shall make. If there should be no interest, or if there should be any sum left from this half, after payment of the interest due, said half of the surplus shall be imputed to the principal of the obligation for which execution was levied, and if after this shall have been done, there should still remain a surplus, it shall be turned over to the execution debtor.

1057.

1049). ART. 208 of Law 105 of 1890. If the bidder should not be awarded the property, he shall be relieved of the obligations which he contracted in order to be able to bid, and therefore, the five per cent which he had consigned, shall be returned to him.

1050). ART. 209 of Law 105 of 1890. If the property should be awarded the bidder, and he should fulfil the conditions thereof in a legal form, the five per cent consigned shall be imputed as a part of the payment.

1051). ART. 1070. Every sale must be made for cash for the payment of the costs. It may be made on time for the payment of the debt, if the creditor should agree, relieving the debtor of the liability; and the sale may also be made on time for the amount of the surplus sum remaining in favor of the debtor, if the latter should agree.

1076.

1052). ART. 1071. The sale of the property having taken place, the Judge shall cause the Secretary to make a record expressing the estates or things sold in detail, the name of the successful bidder, the amount for which such estate or thing may have been sold, the cause for the sale and the terms which may have been stipulated. This record shall be signed by the Judge, the Secretary and the successful bidder.

The following article is supplemental:

1053). ART. 212 of Law 105 of 1890. In executory actions the Judges must order, in the approval of the sale, that the record of attachment of the estate which may have been sold, be cancelled; and they shall transmit the order of cancellation to the respective Registrar in the same terms as that directing the registration of the attachment, with the only changes required by the nature of the proceeding.

1054). ART. 1072. The copy of the record of sale of one or more estates

or things purchased at public sale, is a sufficient title of ownership in favor of the purchaser, who, in addition, has a right of action to force the execution debtor to transfer to him the deeds or documents, if he should have them, and by virtue of which he possessed the property sold. The copy shall be signed by the Judge and by the Secretary.

The copy referred to in this article is equivalent to a public instrument and, consequently, the execution of a public instrument is not necessary for the transfer of the ownership. If the sale shall have been of real property, it shall be sufficient that such title be registered in the proper office, if the law requires this formality in public [instruments transferring property of this character.

The following article is supplemental:

1055). ART. 213 of Law 105 of 1890. The owner of property which may have been sold under an execution has the right to institute an action for revendication, provided that the person bringing such action is not the person against which the executory action may have been brought or who derives his rights from the latter, in accordance with article 846 of the Judicial Code; nor one who shall have interposed in said executory action a suit in intervention, claiming ownership (*tercería excluyente*) if he shall have been cast therein, unless the title he pleads should be different from that discussed in the suit in intervention, in accordance with art. 271 of the Code.

If in the judgment rendered in the suit for revendication, the right of the plaintiff in such property is recognized, it shall be delivered to him whether or not the price of the sale shall have been returned.\*

710, 752, 1130.

1056). ART. 1073. The purchaser of property at a public auction held as a result of judicial proceedings, who shall not have stipulated the payment in installments, must pay the value of the property which may have been adjudicated to him, in cash within twenty-four hours thereafter.

The payment must be made before the Judge of the cause, the proper act thereof being made, and until this shall be done what he may have purchased cannot be delivered to him, nor can the title of ownership referred to in the preceding article be issued to him, unless a document be presented establishing that the creditor and the debtor have agreed as to the amount due each from the proceeds of the sale; but the costs must always be paid in cash down.†

1057, 1076.

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\* Arts. 486 and 271 herein referred to, are ordinal arts. 710 and 23 respectively.

† The preceding article referred to herein is ordinal art. 1054.

The following article is amendatory and supplementary.

1057). ART. 206 of Law 105 of 1890. When the execution creditor or any of the opposing parties should bid at the sale something on the account of their credit, which can be done to the extent of the latter only, he must execute to the satisfaction of the Judge, *a bond of a creditor having a better right (acreedor de mejor derecho)*. This takes place with respect to the execution creditor, when there are one or more other opposing parties who may be prejudiced by the payment. Such bond consists in the surety binding himself, jointly with the principal, to pay the creditor having a better right, according to what may result from the judgment. In the case of this article, the creditor who shall have caused the sale, shall pay the debtor, from the date he receives the thing sold, the same interest which the latter should pay him.

The provisions of this article apply to bankruptcy proceedings.

1047, 1048, 1051, 1235.

1058). ART. 1074. When an estate shall be sold for the payment of the demandable part of a debt payable in installments, for the security of which such estate may have been mortgaged, the debtor cannot demand the excess of the price of the sale, after the deduction of the demandable part of the debt, without assuring to the satisfaction of the creditor, the sum which would still be due, which shall be deposited in the meantime.

1059). ART. 1075. If the purchaser should fail to comply with his obligations, the Judge shall direct that the property sold be again offered at public sale, and be sold to the highest bidder, after advertisements thereof for eight consecutive days. But the next previous successful bidder shall be responsible in an executory manner for the difference between the sales, and cannot be a bidder in a subsequent sale or sales.

A certificate issued by the Judge, authorized by his Secretary, stating the acts which constitute said bidder responsible for the difference between the sales, shall serve as an executory demand against the culpable bidder.

1060, 1048, 1049, 1050.

1060). ART. 1076. The second sale may be omitted if the execution creditor should prefer to levy execution against the first successful bidder for the total value of the sale, which he may do with a copy of the act of such sale and a certificate of the Judge as to the non-payment.

1061.

1061). ART. 1077. The execution for the amount of the difference may be demanded, either by the execution creditor if he should not wish or not be able to extend the original execution to other property of the execution debtor; or by the latter if the execution creditor should extend said execution.

1119.

1062). ART. 1078. If there should be no person making a bid at two-thirds the appraised value, the Judge shall set another day for the sale, which cannot be held less than eight nor more than fifteen days from the date of the notice of the order directing a new sale, and the latter shall be advertised by means of permanent posters. In such case, a bid for any sum is an admissible bid.

1047.

1063). ART. 1079. If the proceeds from the sale should not cover the debt and the costs, the execution shall be extended to other property of the debtor, if the creditor should denounce such property, and it shall be advertised, appraised and sold as prescribed for the first property, if the creditor should not wish at once abandoning, the extension, to proceed in accordance with the provisions of the following article.\*

986.

1064). ART. 1080. When a bond in warranty shall have been furnished, and it shall result that the property to which it refers does not belong to the debtor, or that the proceeds therefrom are insufficient to cover the debt and the costs, an application for a writ of execution may be made, with the undertaking of bond and a copy of the proper record of the executory action, against the surety for the balance remaining due, the proceedings against the principal debtor being discontinued, reserving, however, the rights of the surety, to recover from the execution debtor what he may pay for him.

Expressly repealed by art. 338 of Law 105 of 1890, and subrogated by the following:

1065). ART. 187 of Law 105 of 1890. When a bond in warranty shall have been furnished and it shall result that the property to which it refers does not belong to the debtor, or that the proceeds thereof do not cover the debt and the costs, with a copy of the act or undertaking of bond and of all that which may be proper of the record of the executory action, on the petition of the creditor, executory proceedings may

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\* The provisions of "the following article" cannot be observed, because said following article has been repealed. Hence, it is necessary to consider the article which subrogated it, which is ordinal article 1065.

be instituted against the surety for the balance remaining due, the proceedings against the principal debtor being discontinued, reserving, however, the rights of the surety to recover from the execution debtor what he may pay for him.

981 subdivision 4.

1066). ART. 1081. Whenever executory proceedings shall be annulled after the sale and after the delivery of the thing and its price, the successful bidder shall have the right to retain the thing sold until what he may have paid therefor be returned to him, in addition to interest at the rate of one-half per cent per month to be paid by the person who may have caused the nullity.

823, 1067, 1055.

### THIRTY-FOURTH AMENDMENT.

*(Of Law 46 of 1876.)*

1067). ART. 1082. No sale in which the successful bidder shall have fulfilled his obligations can be annulled except in an ordinary action separate from the executory action, and the nullities in the executory action shall not affect the sale, with the exception of the third nullity mentioned in article 916.\*

1066, 1055.

The following article is supplemental:

1068). ART. 214 of Law 105 of 1890. The sale of property not deposited in the legal form is null; but it is presumed, for the purpose of this article, that the deposit was duly made, if in the respective act it be stated that the actual delivery of the property to the depositary was made.

158.

1069). ART. 1083. With the exception of the notice of the writ of execution, which must be served personally upon the debtor or upon his legal representative, the other notifications in these proceedings may be made by means of writs or edicts, in the form established in chapter 6, Title I, of this book, the Secretary being required in every case to note the hour they are made.

227, 981 subdivision 1.

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\* Art. 916 referred to herein is ordinal art. 806, which has been repealed; but said article was subrogated by ordinal article 823, whose second subdivision is substantially identical to the third subdivision of the article repealed.

1070). ART. 1084. The execution creditor and the execution debtor may appeal from any judgment or decision rendered in these proceedings, within forty-eight hours after notice of the judgment or decision; but the execution creditor shall be allowed the appeal in a suspensive effect, and the execution debtor in the devolutive effect only, with the exception established in article 1086.\*

979, 1071, 1080.

1071). ART. 1085. When in accordance with the provisions of the preceding article an appeal should be granted in a devolutive effect, the original record shall be transmitted to the superior court, and a copy thereof shall be retained in the lower court for the continuation of the proceedings, which copy shall be made at the cost of the appellant.

This copy must be made and compared with the original within the term which the Judge may designate, and if this should not be done owing to the fault of the appellant, the Judge on the petition of the opposite party, and in view of the report of the Secretary only, shall declare the appeal to be abandoned.

The record shall be transmitted after the citation of both parties, even though the appeal granted should be from the decision denying the execution in whole or in part. The effect of this citation is to cause the execution debtor to become a party in the appeal.

#### THIRTY-FIFTH AMENDMENT.

*(Of Law 46 of 1876.)*

1072). ART. 1086. If the execution debtor should appeal from the decision dismissing his exceptions, or from the judgment directing the sale, the appeal shall be granted in a suspensive effect, and it shall be heard and decided by the Court as an interlocutory issue.

1070, 783 to 787.

1073). ART. 1087. Decisions of the Federal Supreme Court, declaring the exceptions proposed by the execution debtor to be or not to be established, and those rendered by Judges of First Instance, from which an appeal shall not have been taken in due time, become final. But the execution debtor may in an ordinary action, instituted upon the termination of the execution, seek to recover what he may have paid in the latter and the damage he may have sustained, provided that he shall establish a legal exception, of which he did not nor could have had knowledge in the term granted him in the executory action to plead an exception.

689, 695, 1074.

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\* Art. 1086 herein referred to is ordinal art. 1072.



The following article is supplemental :

1074). ART. 205 of Law 105 of 1890. A simple judgment of advertisement and sale in an executory action, and that declaring the exceptions interposed in such proceedings to be or not to be established, do not serve as basis for an excepting of *res judicata* in an ordinary action.

1028, 1073, 695.

1075). ART. 1088. A decision directing the discontinuance of the execution shall tax the costs against the execution creditor.

1076). ART. 1089. A decision directing the execution to be proceeded with, as issued, shall tax the costs against the execution debtor, and after the taxation shall have been made, they shall be paid before anything else from the money attached or retained, or from the proceeds, of the property to be sold. The judicial costs arising and which may be necessary to continue the execution, shall be paid by the execution creditor, who shall have the right to collect them together with the other costs belonging to him.

1016, 1051, 1056.

1077). ART. 1090. Executory actions of lesser import shall be instituted verbally before the Corregidores, who shall arrange their procedure to conform to the provisions of this section.

1078.

1078). ART. 1091. If the interest involved in the executory suit in its principal action should not exceed twenty pesos, a succinct record of the complaint shall be entered upon the book of suits of such character as also of the documents or judicial act upon which it is based, and of the subsequent proceedings and acts to the conclusion of the proceedings.

The Secretary shall, upon an order of the Corregidor, issue to any of the parties the certified copies of these records which they may request; but he shall do so at the cost of the party making the request.

1079.

1079). ART. 1092. If the interest involved in the complaint should exceed twenty pesos, in its principal action, the proceedings shall also be verbal; but a process shall be formed, in which a record shall be made of all the acts and proceedings in the suit, and to which must also be attached the documents which the parties may present, exactly as in ordinary or common actions.

1077.

1080). ART. 1093. If the interest involved in the executory action should not exceed twenty pesos, the only remedy against the rulings and decisions of the Corregidores shall be a complaint.

But if said interest should exceed twenty pesos, an appeal lies to the Prefect of the respective Territory, exactly as in executory actions of greater import.

1081). ART. 1094. In executory actions upon complaints not exceeding twenty pesos in their principal action, all the terms shall be reduced to one-half those established in this section for executory actions of greater import.

333.

## SECOND SECTION.

### *Execution by coercive jurisdiction.*

1082). ART. 1095. Officials who under the law, have coercive jurisdiction for the collection of the public revenues, shall employ executory process in the exercise of such jurisdiction, in accordance with the provisions of the preceding section.

Such officials shall proceed in such cases with some of the subordinate employees of their offices, a Secretary *ad hoc*, who shall take oath to faithfully discharge his duties.

1091. 166 and 1253 of the Fiscal Code.

1083). ART. 1096. In these proceedings, in addition to the documents and acts mentioned in article 1010, the following carry execution:

1. The final balances against the persons liable to the Treasury prepared by the General Accounting Office (*Oficina General de Cuentas*), or by any other employees discharging similar duties recognized by the law.

2. The copies of the declaration made by the collectors, against the debtors to the Fisc for taxes or contributions.

3. The copies of the decrees which, in the exercise of their functions, may be issued by public officials imposing fines to be turned into the federal treasury.\*

1084). ART. 1097. Officials exercising coercive jurisdiction shall, independently of any other authority or official, take all the necessary steps to bring the proceedings to the point of citing the execution debtor for judgment of sale, and after having been cited, if he should within the legal term oppose exceptions, the execution official shall transmit the record to the proper Judge of First Instance. If the latter should

\* Art. 1010 referred to herein is ordinal art. 959, which was subrogated by ordinal art. 960.

declare the exceptions not to lie he shall return the record in order that the execution may be proceeded with; the same shall be done if, having admitted them, he should declare them not established.

The record having been received in any of the preceding cases, the execution official shall proceed with the execution in the terms prescribed in the preceding section.

1085). ART. 1098. In the executions levied by virtue of the documents mentioned in the three paragraphs of article 1096, the following exceptions only shall be admissible:

1. Falsity of the document in whole or in a substantial part.
2. Payment; and
3. An error in account.\*

1086). ART. 1099. If the exceptions should be declared established, the Judge shall return the record to the execution official in order that the judgment may be executed.

1087). ART. 1100. Appeals from these executions shall be allowed to the Federal Supreme Court.

1088). ART. 1101. When proceedings are to be had outside the place of the residence of the execution official, the latter may address communications to his agents or to the Judges of the place in which the proceedings are to be had.

1089). ART. 1102. If there should be a defendant in intervention claiming ownership the execution official shall transmit the opposition with the record to the proper Judge of First Instance, in order that the latter may decide whether the opposition is admissible or not, and, in the former case hear and decide the matter.

If there should be a plaintiff in intervention, he shall also transmit the opposition to the competent Judge with a transcript of the proceedings had, making in the original record the proper entry, in order that the Judge may take cognizance of the suit in intervention, and decide it.

1090). ART. 1103. In addition to the provisions of the preceding section, those of the two which follow are common to these actions.

The following article is supplemental:

1091). ART. 96 of Law 30 of 1888. Any collector having charge of the collection of public taxes, whether destined to the ordinary expenses of the Administration, or whether to be employed upon works for which the Government may be duly authorized by Law, is a Treasury Collector who exercises the coercive jurisdiction referred to in art. 1253 of the Fiscal Code and Section 2, of Title XI, Book II of the Judicial Code.

The fourth paragraph of article 6 of Law 23 of 1887, is amended according to the terms of this article, and article 1253 of the Fiscal Code and

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\* Art. 1096 cited herein is ordinal art. 1083.

Section 2 of Chapter I, Title II, Book II of the Judicial Code, are thus supplemented.\*

### THIRD SECTION.

#### *Provisions supplementary to the two preceding sections.*

1092). ART. 1104. Fruits hanging upon plantations cannot be attached except within six weeks preceding the ordinary time of maturity and harvest of such fruits; and when such attachment takes place, the writ shall state the kind of fruits, the name and area of the plantation and, if possible, the names of the adjoining owners.

981, subdivision 5.

1093). ART. 1105. Even though the attachment should not include the land upon which the plantation is situated, a receiver (*interventor depositario*) shall be appointed in accordance with the terms and for the purposes of article 383. Said receiver shall be furnished a copy of the writ of attachment, and the plantation shall be turned over to him in accordance therewith.†

156.

1094. ART. 1106. Hanging fruits may be sold before or after harvesting at the option of the creditor.

1027, 1028, 1097.

1095). ART. 1107. The kind of fruits shall be stated in the announcements, which shall be posted for eight days in the place of sale, and in the district in which the plantation is situated.

1035, 1036.

1096). ART. 1108. The sale may be held, if deemed advisable in the place where the plantation is situated, or in another district of the circuit where there is reason to expect a larger number of bidders.

1040, 1041.

1097). ART. 1109. If the creditor should prefer that the sale be made after the harvest of the fruits, the receiver shall be authorized by the Judge to incur the cost of harvesting, and such other expenses as may

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\* Art. 338 of Law 105 of 1890 repealed all the provisions regarding civil procedure contained in Law 30 of 1888; nevertheless, we reproduce this article as it is pertinent and because, furthermore, being supplemental to the Fiscal Code, it is in force as to the latter.

† Art 383 cited herein is ordinal art. 153.

be necessary for the preservation and delivery of the fruits in the place where they are to be sold.

The sale shall be conducted as is a sale of movables.

1096, 1035.

1098). ART. 1110. When the net annual product of the income, salary or pension attached, should be fixed in its quota, an appraisement shall not be necessary, and the creditor may choose between receiving one-half the proceeds in the same manner as the execution debtor or owner did, until the entire debt shall have been paid, or the sale in advance of the income for a number of months or years, sufficient to cover the debt and the costs.

In the first case, the creditor is entitled to the annual interest of the portions, which at the time of each installment shall be unpaid, including in the total sum the amount of the costs, and estimating the interest, if any should be stipulated at twelve per cent per annum.

In the second case, there shall be offered at public sale one-half the interest, salary or pensions attached for the number of months which may be necessary, in the judgment of the highest bidder, to cover presently in cash the total amount of the debt and the costs. The highest bidder shall in this case be the one who offers to give this sum for the lowest number of months or years.

1101.

1099). ART. 1111. When the annual product of the income attached should not be fixed but eventual, the appraisers shall estimate its amount approximately, by virtue of the data which they may be able to obtain, and which they shall carefully examine.

1100). ART. 1112. Under the penalty of the person who is to pay the income attached becoming obligated as a warrantor, the Judge shall order such person to submit a sworn statement showing the origin of the income, its capital, the property which assures it, if it should consist of a mortgage, and the charges thereon. The author of the statement shall likewise state whether other judicial attachments of the same income shall have been levied in his hands.

The penalty indicated in the first part of this article shall be incurred, not only on a failure to present the statement referred to therein, but also for any falsity which may be committed therein, whether in favor or to the prejudice of the execution debtor.

1102.

1101). ART. 1113. The warrantor of an attachment consisting of an annual income of a rent charge (*censo*), salary, pension or anything similar, is under the obligation of paying the debt and the costs, or the

default thereof, if the creditor should not agree to receive one-half said income, as its owner did, and thus gradually recover his claim, and if, furthermore, there is no bidder who offers to give the full sum of the debt and the costs, for the right of himself collecting said half of the income during a certain number of months or years.

981 subdivision 4.

1102). ART. 1114. After the annual income of a debtor shall have been attached, it cannot be attached in favor of other creditors, unless the first one having been paid, such half shall remain free; or for the time it may remain so.

1100 first par.

1103). ART. 1115. The Notary of the place where the attachment of the annual income of real property is levied, shall be notified thereof, and said official, or the person acting in his stead in said place, shall keep a register of the said attachments, noting in the margin of each record the raising of the attachment or the sale, as the case may be, in order that the creditors may know, or be able to ascertain exactly, the condition of their debtors who enjoy property of this character.

#### FOURTH SECTION.

##### *Intervention in Executory Actions.\**

1104). ART. 1116. Any person desirous that with the product of the property of a debtor which has been attached, he also be paid what the latter owes him, shall have the right to bring an intervention claiming a privilege (*tercería coadyuvante*) which shall be admissible at any stage of the executory action, provided that the execution creditor shall not have been paid with the product of the property attached, and that the interventor present evidence, even though it be summary, of his credit.

1105). ART. 1117. The admission of an intervention claiming a privilege does not suspend the executory action, but it does defer the payment until the preference between the creditors shall be decided, after the measures established for insolvency proceedings, which shall begin when the probatory term is opened, which shall be decreed in the same decision which admits the intervention.

If before a definitive judgment is rendered upon an intervention claiming a privilege new plaintiffs in intervention should appear, new pro-

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\* All the articles which constitute this Section in the last edition, viz, 1104 to 1112, were expressly repealed by article 338 of Law 105 of 1890, and subrogated by ordinal arts. 1113 to 1145.

ceedings shall be instituted with regard to them, with which those pursued up to that time shall be consolidated.

1106). ART. 1118. When a third person should oppose the execution, claiming that the attached property is his, his opposition shall be admitted, whatever be the stage of the executory action, unless payment shall have been made to the execution creditor with the proceeds of the property attached, and provided that the interventor attached to his bill the document or the summary evidence establishing that the property claimed belongs to him.

1107). ART. 1119. Whenever an excluding intervention (as that referred to in the preceding article is called) shall be admitted, the Judge in the same judgment shall take evidence in the incident as to the ownership of the property the subject of the opposition, the procedure in an ordinary action being pursued in the subsequent proceedings, and the announcement and sale of the property involved in the intervention being ordered suspended.

1108). ART. 1120. When by a final judgment an excluding opposition should be declared as not established, the execution shall continue as to the property which it was desired to exclude, from the stage it had reached when suspended by the admission thereof.

If the opposition should be declared to be established, the attachment on the property shall be raised in order that it may be delivered to the interventor, and the execution shall continue upon the other property of the execution debtor which may be attached, or that which may again be produced by him, or denounced by the execution creditor.

1109). ART. 1121. If before a definitive judgment should be rendered upon a demand in intervention, new opposers should appear also claiming ownership, a new action shall be instituted with regard to them, to which the action conducted up to then shall be consolidated.

1110). ART. 1122. The consolidation ordered in the preceding article shall also lie when the various interventions should be some claiming ownership and others a privilege.

1111). ART. 1123. The procedure established by art. 1117, shall be observed in every case of consolidation of interventions.

1112). ART. 1124. Every decision not one of mere practice in demands of intervention, whether such intervention be one claiming ownership or a privilege, may be appealed from to the Federal Supreme Court, and the appeal from the judgment deciding such actions, shall be heard as that from definitive judgments rendered in ordinary actions or in insolvency proceedings, according to whether the intervention shall have been one claiming ownership or a privilege.

All these articles of the Fourth Section have been repealed as stated, and subrogated by the following: 1113 to 1145.

1113). ART. 215 of Law 105 of 1890. An intervention claiming a

privilege (*tercería coadyuvante*) is the petition of the third person requesting that the proceeds of the property attached in an execution be used to cover a credit which gives rise to a personal action against the execution debtor, or a real action against said property.

1121, 1132, to 1135.

1114). ART. 216 of Law 105 of 1890. Upon the admission of an intervention claiming a privilege, the execution creditor may introduce those which he may deem advisable to obtain the payment of that which the execution debtor may owe him, and which may not be comprised in the execution.

1124.

1115). ART. 217 of Law 105 of 1890. An intervention claiming ownership (*tercería excluyente*) is the petition of a third person requesting that he be declared to have a better right than the execution debtor, the execution creditor and other opponents to the ownership of all or of some of the property attached. Rights limiting the ownership of an estate which may have been attached as free from such encumbrance may also be claimed in this manner.

The value of the property which may have been sold may also be claimed by means of an intervention claiming ownership, upon the establishment of a right to such property. If what is claimed should be a right other than ownership, upon the right of action being duly established, there shall be ordered paid with the proceeds of the property, the amount which experts may fix as the value of such right; all of which is without prejudice to the revendication.

1120, 1127, 1130, 1035, 1132, 1133, 1135.

1116). ART. 218 of Law 105 of 1890. Interventions may be brought immediately after the attachment of the property; and the right to interpose interventions claiming a privilege ceases upon payment having been made to the creditor from the proceeds of the property sold.

222.

Amended by the following article:

1117). ART. 38 of Law 105 of 1890. Interventions claiming a privilege, interposed in executory action, before the rendition of a judgment for advertisement and sale, shall be reserved until such judgment shall be rendered.

Law 169 of 1896, article 24, is additional.



1118). ART. 219 of Law 105 of 1890. In order that an intervention claiming a privilege or ownership may be adopted, it is necessary that it be made by means of a written petition, drawn upon the proper paper and in the form required by law for all complaints in ordinary actions, the interventor being obliged to attach to his bill the document or the evidence upon which he bases his opposition.

1126.

1119). ART. 220 of Law 105 of 1890. When in an executory action interventions claiming ownership of a privilege shall be admitted, the execution creditor recovers the right which, according to article 1027 of the Judicial Code and, those preceding this one, he has at the time of the institution of executory proceedings to denounce more property belonging to the execution debtor, unless a new bond in warranty should be constituted.\*

986, 1063, 1143.

1120). ART. 221 of Law 105 of 1890. The right to interpose in intervention claiming ownership ceases with regard to the property already sold, without prejudice to the right granted by art. 213 of this Law.†

1116.

1121). ART. 222 of Law 105 of 1890. Upon the admission of the demand in intervention, it shall be referred to the execution debtor, the execution creditor and to such interventors as there may be, when the oppositions of the latter should refer to the same property.

The term of reference shall be of three days, for the execution debtor as for the execution creditor; but if there should already be one or more interventors, the term of reference shall be a common one of six days.

222, 1132, 1133, 1135.

1122). ART. 223 of Law 105 of 1890. Upon the admission of the first intervention claiming a privilege, the public shall be notified of the admission thereof by means of an edict, which shall be posted in the office of the Secretary of the Court, in a place specially set aside for the posting of edicts of this character. Mention shall be made in said edict of the executory action, in which the intervention has been introduced, with a statement of the names of the parties. The edict shall remain posted for ninety days, and a copy thereof shall be published six times in the official journal of the Department, within the said ninety days.

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\* Art. 1027 cited herein is ordinal art. 981.

† Art. 213 herein cited is ordinal art. 1055.

It shall be understood that in accordance with this article one edict only is required to be posted and published, upon the admission of the first intervention claiming a privilege, and not as many edicts as there are interventions interposed.

1017.

1123). ART. 224 of Law 105 of 1890. During the time the edict referred to in the preceding article is posted and published, the course of the executory action shall not be stayed; but payment of the creditors with the proceeds of the property sold shall be postponed until said term shall have expired, the edict shall have been published and the final rule fixing the order of preference made.

The interventions interposed shall be given their legal course, even though it should be within the term that the edict is to be posted without prejudice to the provisions of article 800 of the Judicial Code.\*

1135.

1124). ART. 225 of Law 105 of 1890. Upon the expiration of the ninety days referred to in article 223, no intervention claiming a privilege shall be admitted which is based upon a document or proof of a date subsequent to the writ of execution.†

1116, 1117, 1127.

1125). ART. 226 of Law 105 of 1890. For the purposes of the preceding article, the provisions of article 1762 shall be observed as to the manner of deducing the date of private instruments with relation to third persons.

1126). ART. 227 of Law 105 of 1890. If the intervention be one claiming ownership, the proof upon which it is based must be the title or document that, in accordance with the civil law in force when the ownership of the thing claimed, or the right therein, was necessary to acquire the ownership of the thing or the right whose recognition is requested.

1118.

1127). ART. 228 of Law 105 of 1890. When the writ of execution is directed against a mortgaged estate, no intervention claiming ownership shall be admitted which is based upon a document of a date subsequent to that of the instrument which served as a basis for the writ of execution.

1128, 1129, 1124.

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\* Art. 800 cited is ordinal article 652.

† Art. 223 cited is ordinal art. 1122.

1128). ART. 229 of Law 105 of 1890. He who believes himself entitled to the ownership of a mortgaged estate against which proceedings are brought as such, and should base his right upon an instrument of a date subsequent to that upon which the mortgage was constituted, may appear in the suit, provided payment shall not as yet have been made to the creditor, and interpose an exception of the nullity of the mortgage instrument, or of the record, or of the entry, or of the contract recited therein. This exception shall be heard and decided as any incidental issue.

1129). ART. 230 of Law 105 of 1890. The exception of nullity referred to in the preceding article shall not be admitted if it shall have already been pleaded by the execution debtor, and disposed of by a final judgment; but he who believes himself as having a right to the ownership, may become a party to the incidental issue to which the exception of nullity pleaded by the execution debtor may have given rise, whatever be the stage of such incidental issue, and without causing the terms to retroact. Nevertheless, if the exception of nullity pleaded by the execution debtor should have been decided negatively, for lack of evidence, said third person shall have the right to plead the same exception.

1130). ART. 231 of Law 105 of 1890. In addition to the persons mentioned in article 871 of the Judicial Code, who cannot intervene when the execution of a judgment is in question, the persons referred to in articles 846 *et seq.*, of Title IV, Book II of said Code, cannot intervene.\*

710, 752, 1055.

1131). ART. 232 of Law 105 of 1890. The ruling admitting an intervention, may be appealed from in a devolutive effect, and that denying it, may be appealed from in both effects.

The appeals referred to in the preceding paragraph, do not in any manner whatsoever affect the continuation of the executory action.

1132). ART. 233 of Law 105 of 1890. Parties in the intervention are the opposer, who acts as plaintiff, and the execution creditor and debtor who act as defendants, who may be represented by the attorneys in fact constituted for the executory action.

742, 994, second par., 1127, 1133, 1135.

1133). ART. 234 of Law 105 of 1890. Notice of the ruling admitting an intervention shall be served personally upon the execution creditor, the execution debtor, the person who made the opposition and the other opposers admitted, who may have an interest in the same property, the proceedings conforming, in a proper case, to articles 222 and 223 of this

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\* Arts. 846 and 871, cited herein, are ordinal arts. 710 and 752 respectively.

Law. Notice of the ruling denying an intervention, shall be served, as in ordinary cases, such intervention being considered as an issue incidental to the executory action.\*

1132, 1135.

1134). Art. 235 of Law 105 of 1890. An intervention having been admitted, if the other parties should state within forty-eight hours after service of notice, that they agree to the claim of the interventor, judgment shall be rendered, after citation, if such were the only intervention, but if there should be one or more other interventions that newly introduced shall be consolidated therewith and shall pursue their course.

1136.

1135). ART. 236 of Law 105 of 1890. Every intervention shall be heard and decided in accordance with the procedure of the respective ordinary action, and such procedure shall also be pursued even though there should be two or more interventions.

1121, 1132, to 1134.

1136). ART. 237 of Law 105 of 1890. All interventions interposed shall be consolidated, whether they claim a privilege or ownership, even though one or more of them should have been definitively decided at the time new ones are interposed; this consolidation shall be ordered so that in the judgment of preference or of exclusion, the rights of all and every one of the interventors may be determined.

1134.

1137). ART. 238 of Law 105 of 1890. If in an execution of greater import one or more interventions of lesser import should take place; or if in an execution of lesser import there should be one or more interventions of greater import, the respective Circuit Judge shall take cognizance of the interventions.

1138). ART. 239 of Law 105 of 1890. When real property shall be attached in an executory action, the execution creditor is obliged to present, within the term which the Judge of the cause may fix, a certificate from the Registrar of public instruments establishing the unencumbered character of the estate, or the charges to which it may be subject.

1139 to 1142.

1139). ART. 240 of Law 105 of 1890. If the certificate should show that the estate is encumbered, the Judge shall order *ex proprio motu*

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\* Arts. 222 and 223 are ordinal arts. 1121, 1122.

that the creditors who hold the mortgage on said estate be personally cited, summoning them to appear within a reasonable term which he shall fix, to avail themselves of their rights in the suit in intervention.

1140). ART. 241 of Law 105 of 1890. Unless the fact of such summons having been made shall appear of record, the sale of the realty shall not be proceeded with.

1141). ART. 242 of Law 105 of 1890. If the creditors cannot be found in order to be summoned personally, by reason of their names being unknown or their whereabouts ignored, the Judge shall direct that they be summoned and that counsel be appointed to them in accordance with the general provisions; after which if they should not appear in due time, the execution shall be proceeded with and completed with a hearing of counsel.

The amount pertaining to the creditors referred to shall be deposited with a person of notorious honesty, with the proper securities, or with a responsible credit institution.

1142). ART. 243 of Law 105 of 1890. If the mortgage creditors referred to having been summoned, they should fail to enter an appearance within the term which the Judge may have assigned them, nor before payment is made to the execution creditor, this shall not be an obstacle to the payment in due time to the latter and to the other creditors of what may be due them by way of principal, interest and costs. If there should be any surplus, the amount due the said creditors shall be taken therefrom and deposited in accordance with the provisions of the last paragraph of the preceding article. The persons interested shall be informed of this deposit by means of an advertisement which shall be published three times in the official periodical of the respective Department, and upon the expiration of six months, if no claim whatsoever should have been made on the part of the said creditors, the money shall be turned over to the execution debtor.

1143). ART. 244 of Law 105 of 1890. He who intervenes claiming a privilege with a document which carries execution, has the right to extend the execution by denouncing more property of the debtor.

986 and 1063.

1144). ART. 245 of Law 105 of 1890. When there are funds in cash, belonging to one execution, and which as a consequence of an intervention or another cause cannot be paid to the execution creditor at once, they shall be deposited with the person offering the highest interest and the best security. The Judge shall qualify the bond, and if the security should not consist of a mortgage, it may be furnished by means of an act drawn in the record which shall be signed by the Judge, the Secretary and the sureties. This act shall have the force of a public instrument.

If the security offered should be equal, preference shall be given the person who offers the highest rate of interest; and if the interest rate be identical, the better security shall be preferred. In order to make these impositions, the Judge shall direct that posters be affixed, at least three days in advance, upon the door of the court room and in other of the most public places, indicating the date and the time the deposit is to be made.

1141 second par., 824 second par.

1145). ART. 246 of Law 105 of 1890. If the execution creditor should abandon the suit, the interventions claiming a privilege shall not be terminated if they should be based upon a document carrying execution. In such case, if there be one intervention only the intervener shall be considered the execution creditor, and the execution debtor shall be cited for judgment of advertisement and sale. If there should be two or more interventions, they shall continue their legal course, and after a judgment allowing the preference shall have been rendered, it shall be fulfilled. Even though the title upon which the intervenors base their opposition should not carry execution the interventions shall continue their legal course if judgment allowing the preference shall have been rendered and the rights of the intervenors should have been recognized thereby. In all cases in which the interventions do not terminate by virtue of the abandonment of the proceedings, the intervenors may request the sale at auction of the property attached.

659, 682, 1136.

## CHAPTER II.

### *Bankruptcy Proceedings.*

1146). ART. 1125. The Judge of First Instance of the Circuit, province or territory where the debtor may have his domicile, is of competent jurisdiction to declare the property of a debtor subject to proceedings of his creditors and to take cognizance of the proceedings consequent upon this declaration:

1147). ART. 1126. Proceedings shall be instituted against the property of a debtor:

1. By the voluntary assignment thereof which he may make.

1150. 1672 *et seq.* of the Civil Code.

2. By reason of execution having been levied by two or more creditors and his failure to present or the absence of a denunciation of sufficient property for the full payment of the debts the basis of the execution; and

3. By reason of a declaration of bankruptcy, in accordance with the respective provisions of the Code of Commerce.

1152. 121 to 181 of the Code of Commerce.

1148). ART. 1127. In the third case of the preceding article, the same Judge who declares the bankruptcy shall in the same proceeding decree a general meeting of creditors.

122, 133 to 136, 143, 144 to 147, 153 *et seq.*, of the Code of Commerce.

1149). ART. 1128. If within thirty days of the summons which will be treated of below, any of the creditors should charge the assignment to be fraudulent, this question shall be passed on in the said proceedings of creditors, which question the Judge shall decide in the rule graduating the credits.

1128, 1133 subdivision 3, 810 to 819 of the Penal Code.

1150). ART. 1129. The debtor making an assignment of property must present to the Judge, at the time of so doing, two sworn statements, one of the property, rights and actions which he may have, and the other of his liabilities, stating the names of his creditors, the amount of each credit and its origin.

1171.

1151). ART. 1130. When a general meeting of creditors shall have been called by reason of executions, the Judge shall direct that the debtor, if he has appeared present within six days the statements referred to in the preceding article.

1171.

1152). ART. 1131. When a meeting of creditors shall have been called by reason of the bankruptcy of a merchant, who shall have failed to present the general balance of his business, or a memorandum or statement expressing the direct and immediate causes of his bankruptcy, the Judge shall direct the debtor, if present, to comply with this obligation within six days, in the same decree declaring the bankruptcy.

1171.

1153). ART. 1132. In any case in which the property of a debtor shall be declared subject to bankruptcy proceedings the following measures shall be taken:

1. The attachment and deposit of the property of the insolvent, and the judicial seizure of the books, papers and documents of his affairs.

1136 to 1161.

2. The appointment of a receiver, to the satisfaction of the Judge, in order that he may assume the custody and preservation of the property attached until the syndics shall be appointed.

1157 last par., 1163, 2194, 1232.

3. The call by edicts of all the creditors, and of the absent debtor, summoning them to enter an appearance in the proceedings in person or through an attorney in fact, with a warning that their omission or neglect will cause them to suffer the loss and damage which the bankruptcy proceedings and their determination may entail.

1154, 1155, 1219, 1220.

4. The personal citation of the debtor and of the known creditors, whatever be their residences.

1219, 825, 832 subdivision 4, 833 last par.

5. The detention of the correspondence of the insolvent for the purposes which will be stated below: and

1170.

6. The call of the creditors for a general meeting.

1154). ART. 1133. In the edicts of summons referred to in the 3d paragraph of the preceding article, an order shall be included directing that no one make any payments, nor deliver property to the bankrupt but that they do so to the receiver appointed, under penalty of such persons who make such payments or deliveries to the insolvent not being discharged from their respective obligations.

All persons having in their possession belongings of the bankrupt shall also be directed to inform the Judge of the cause of the same.

Finally, the day and hour for the general meeting of the creditors shall be announced.

1153 last par., 1156 third subdivision.

1155). ART. 1134. The edicts shall be posted on the main door of the office of the Secretary of the Court, and a copy thereof shall be inserted three times in one or more newspapers, if any of the parties should request that this be done at their cost.



The edicts shall also be posted in places where creditors of the bankrupt are known to live, for which purpose the Judge shall issue the proper dispatches.

1153 subdivision 3.

1156). ART. 1135. It shall be the duty of the Judge of the cause:

1. To authorize all the acts pertaining to the seizure of the property of the insolvent, and of the papers pertaining to their affairs.

1157 to 1161.

2. To issue the orders necessary to provide for the safety and preservation of the property constituting the assets.

1157.

3. To preside at the general meeting of creditors.

4. To make an examination of all the books, documents and papers relating to the business of the bankrupt, in order to make the orders regarding the assets.

1157 subdivisions 2 and 3.

5. To supervise all the transactions of the receiver and of the syndics of the bankruptcy proceedings, and see to the proper management and administration of the property of the bankrupt.

6. The other functions specially vested in him by this Code.

1157). ART. 1136. The seizure of the property and papers of the bankrupt shall be effected in the following manner:

1. All the warehouses and deposits of merchandise and effects of any kind of the bankrupt shall be locked under two keys, of which the Judge shall keep one and the depositary or receiver the other.

2. The same shall be done with the office of the bankrupt, if he have any, a record being made of the number, kinds and condition of the account books which may be found, a note being made in each one of them, immediately after the last item, of the written sheets which it contains, which note shall be signed by the Judge and the Secretary.

The bankrupt may attend the said acts in person or through an attorney in fact, and if he should so request, he will be given a third key.

1162.

3. At the time of the occupation of the office, an inventory shall be made of the money, drafts, bills payable and other credit documents belonging to the assets, and they shall be deposited in a chest having two keys, the necessary precautions for their safety being taken.

1166.

4. The movable property of the bankrupt which may be in store-houses and which cannot be placed under lock and key, and the live stock shall be turned over to the receiver, the insolvent being left nothing but the property not subject to attachment, in accordance with art. 1048.\*

5. The real property shall be placed under the provisional administration of the receiver, who shall collect its fruits and products, taking care to avoid any malversation; and

6. With regard to the property situated without the place in which the proceedings are being had, similar measures shall be taken by the Judge whom the Judge of the cause must commission for the purpose.

If the holders of this property should be persons of means and of notorious responsibility, in view of the value of such property, the deposit shall be made with them.

#### 1153 subdivision 2.

1158). ART. 1137. If the bankrupt should be a general partnership, the property of all the partners who appear liable in the articles of co-partnership for the results of the negotiations, shall be seized.

This provision shall not apply to joint stock companies or associations or to limited companies, that is to say those which are formed of shares the value of which constitutes the only capital of its business.

1159). ART. 1138. In order to effect the occupation or attachment mentioned, the Judge shall take into consideration the balance, or the statement of property which the bankrupt may have presented; and in the absence of such data, the property notoriously owned by the bankrupt, and that which the creditors, upon swearing not to act maliciously, may denounce, under their liability, to be the property of the bankrupt shall be delivered and deposited.

#### 1150 to 1152.

1160). ART. 1139. If the property produced by the bankrupt or denounced by the creditors should be in the possession of a third person who claims it as his own, at the time of the attachment thereof, if the proceedings of attachment and deposit should have been conducted with such person, or within three days after personal service upon him of notice of such attachment, provided that the sale shall not have taken place if such proceedings had not been served upon him, the property shall be left in his possession, provided that he furnish a bond, to the satisfaction of the Judge, to return it in the condition in which it may have been when the attachment was levied, and with all its fruits provided that it be declared that such property belongs to the insolvent debtor.

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\* Art. 1048 cited is ordinal art. 1018.

If the property in question should be fungible (consumable) the bond shall be to secure the return of the same quantity and quality as the property attached.

1161.

1161). ART. 1140. If the creditor making the denunciation should be of notorious responsibility, in the opinion of the Judge of the cause, the creditor of ownership may require that he furnish security to the satisfaction of the Judge to answer for the damage which the denunciation may cause him, if such denunciation should be declared to be unfounded.

1162). ART. 1141. The Judge, with the attendance of the depositary, may examine all the books and papers of the bankrupt without removing them from the office, in order to secure the data and memoranda which he may need, in order properly to discharge his duties in connection with the bankruptcy proceedings.

The bankrupt may attend this act either in person or through an attorney in fact, for which purpose he shall be previously summoned, and the day and hour fixed.

1157 subdivision 2.

1163). ART. 1142. As depositary shall be appointed a person of notorious responsibility and good credit, whether he be a creditor of the insolvent or not; and before entering upon the discharge of his duties he shall swear to discharge them well and faithfully.

1153 subdivision 2.

1164). ART. 1143. Drafts, promissory notes and any other paper representing past due credits, shall be collected by the depositary, and those payable in a different domicile, shall be forwarded by him for collection to a responsible person, with the authority of the Judge.

1165, 1169.

1165). ART. 1144. It shall be the duty of the depositary under his liability, to take the steps necessary with regard to drafts which are to be presented for acceptance, or be protested for non-acceptance or non-payment.

1166). ART. 1145. In order to take the steps mentioned in the preceding two articles in due time, the documents of credit which are to be presented for acceptance or payment, shall be withdrawn from deposit a sufficient time in advance.

1157, subdivision 3.

1167). ART. 1146. All sums collected belonging to the estate of the bankrupt, shall be deposited with the money and paper of the same kind.

1157 subdivision 3, 1199, 1201.

1168). ART. 1147. The endorsements, receipts, and any other document of obligation or discharge drawn by the depositary, must be authenticated with the countersignature of the Judge.

1164.

1169). ART. 1148. The depositary cannot sell the effects of the estate of the bankrupt, unless they be such as cannot be kept without deteriorating or rotting. Nor can he make any other expenditures but those absolutely necessary for the custody and preservation of the effects which he may have on deposit.

In order to do either, he shall require the permission of the Judge.

1194.

1170). ART. 1149. The correspondence of the bankrupt shall be placed in the hands of the Judge, who shall open it in the presence of such bankrupt or of his attorney in fact, delivering to the depositary the letters which relate to the affairs of the bankrupt, and to the insolvent or to his attorney in fact such as refer to other matters.

After the appointment of syndics, they shall receive the correspondence, always calling the bankrupt or his attorney in fact to open the letters and deliver to him those not pertaining to business.

1153 subdivision 5.

1171). ART. 1150. In the event that by reason of absence, incapacity or negligence of the bankrupt, he should fail to prepare the general balance of his affairs, or the lists of his assets and liabilities, the Judge shall immediately appoint a merchant or a suitable person to prepare these papers, granting him for this purpose a brief and peremptory period which cannot exceed fifteen days. The commissioners shall be given the books and papers of the insolvent in the presence of the Judge and in the same office.

1150 to 1152.

1172). ART. 1151. The day to be set for the general meeting of creditors shall be not less than thirty nor more than forty days, from the date of the declaration of bankruptcy.

1153 subdivision 6.

1173). ART. 1152. Upon the arrival of the day and hour set for the general meeting of creditors, which shall be held in the court room, the Judge shall designate which of those appearing has the right to attend the deliberations of the meeting and cast a vote.

This right is vested in the creditors who establish that they are such by the sworn statement of the bankrupt or by the balance of the books presented, and those who may have entered an appearance in the proceedings basing their claims upon documents which establish the credits they claim.

1174). ART. 1153. Upon the meeting being constituted, the creditors shall be shown the balance and the lists presented by the bankrupt, or formed as provided by article 1150, the Judge *ex proprio motu*, or at the instance of any of those present, making all the verifications which may be deemed necessary with the books and documents of the bankrupt, which shall be held at hand.

The depositary shall also present to the meeting a detailed report upon the condition of the branches of the bankrupt and the opinion which can be formed as to the results thereof. He shall likewise present to the meeting a memorandum of what he may have collected and expended to that date, as such depositary.\*

1175). ART. 1154. If the bankrupt or his attorney in fact should make propositions at this meeting regarding the extrajudicial payment of the creditors, such propositions shall be discussed, and if they should be unanimously approved by the creditors or their attorneys in fact empowered to compromise, the bankruptcy proceedings shall be terminated, provided that the creditors present compose more than two-thirds of the creditors of the bankrupt recognized up to that time, and that their claims against the debtor compose more than three fifths of the total liabilities of the bankrupt.

1176 to 1178.

1176). ART. 1155. The arrangements referred to in the preceding article, can relate only to the proportionate rate under which all the creditors are to be paid, and the term within which payment is to be made, and must never extend to special extensions or reductions which shall not have been agreed to by those prejudiced thereby.

1177). ART. 1156. If there should be no agreement, at the same meeting syndics and experts for the appraisal of the assets shall be appointed, in order that the proceedings may be continued; but without prejudice to such proceedings being suspended at any time, by unanimous agreement of the creditors and the bankrupt.

1178). ART. 1157. Private agreements of the creditors with the bankrupt are null, unless they be reduced to a simple remission of their

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\* Art. 1150 cited is ordinal art. 1171.

claims; and furthermore the creditors shall lose any rights they may have in the proceedings, and the bankruptcy shall be declared to be a fraudulent one.

1179). ART. 1158. The number of syndics shall be fixed in advance by the Judge, according to the extent of the business of the bankrupt but such number can never exceed three.\*

1180). ART. 1159. The appointment of each syndic shall be made by a majority vote of all the creditors attending the general meeting. The majority is constituted by one-half and one or more of the number of persons voting, representing three-fifths of the total credits which they comprise among them all,

1181). ART. 1160. The appointment of experts for appraisal shall be made in the same manner as that of the syndics.

1182). ART. 1161. Any creditor who is such of his own right may be appointed a syndic, provided that he be, furthermore, a responsible person, over twenty-one years of age and with a habitual residence in the place where the proceedings are being held.

An association, juristic person or moral entity may be appointed syndic.

1189.

1183). ART. 1162. The minutes of the general meeting of creditors shall be signed by the Judge, the creditors, and the Secretary of the court.

1184). ART. 1163. The syndics shall take oath to discharge their trust in accordance with the laws.

1192.

1185). ART. 1164. The following are the duties of the syndics:

1. The administration of all the property and assets of the bankrupt.
2. The collection and receipts of all the credits composing the assets, and the payment of the expenses of administration necessary for the preservation and benefit (*exploitation*) of the property; and

1199, 1200, 1201, 1202.

3. The defense of all the rights of the bankrupt, and the exercise of the actions and exceptions which may be proper.

1196.

1186). ART. 1165. The syndics may, with the authority of the Judge of the cause, and under the liability of the former and the

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\* For provisions regarding syndics see ordinal arts. 1180, 1181, 1182, 1184 to 1202, 1230, 1231, 1232.

latter, appoint attorneys in fact for the discharge of one or more of their attributes.

1196.

1187). ART. 1166. Upon the petition of any creditor, summarily established, upon abuses of the syndics in the discharge of their functions the Judge must decree their removal, and appoint the persons who are to substitute them from among those who at the general meeting of creditors secured the next lower number of votes than those appointed by the creditors.

1190.

1188). ART. 1167. The removal of the syndics shall also be decreed when it shall be requested by all the creditors present, even without the statement of a cause, and in such case they may designate the substitute or substitutes who are to be appointed by the Judge.

1189). ART. 1168. If one of the syndics being a creditor, his credit should not be recognized in the decision at first instance, he shall by such failure be removed from said office, and the Judge shall appoint the person who is to substitute him.

1182.

1190). ART. 1169. The syndics shall be responsible to each and every one of the creditors for the faults they may commit in the discharge of their duties, which are, in addition to those imposed upon them by this Title, those which every paid agent has, under the substantive laws.

1191). ART. 1170. The syndics shall receive the same fees as the depositaries, and in addition, one-half per cent of the sums they may collect for debts of the bankrupt; they must also be compensated for their labor in the bankruptcy proceedings, being allowed such compensation as may be fixed by experts, provided that they have not given rise to improper delays.

1192). ART. 1171. As soon as the syndics shall have accepted and been sworn into their office, they shall proceed to receive all the belongings of the bankrupt, the books and other papers which may be deposited under a formal inventory, which shall be signed by the syndic receiving and the depositary making the delivery, which inventory shall be made a part of the record of the case.

The property and effect that for any reason whatsoever may be in a place other than that where the proceedings are being held, shall be included in the inventory as appearing from the records in the proceedings and the books and papers of the bankrupt; and the Judge shall

issue orders directing that said property be placed at the disposition of the syndics, excepting such as are claimed by an action of ownership.

1184.

1193). ART. 1172. The depositary shall render a formal account, with the proper vouchers, to the syndics within three days after their appointment; and for the approval of this account an incidental issue shall be heard and decided in the manner prescribed by article 1200.\*

1232.

1194). ART. 1173. The consumable property of the assets shall be sold by the syndic, with the authority of the Judge of the proceedings, at such price as the latter may determine.

1169, 1195.

1195). ART. 1174. The syndics cannot purchase for themselves nor for any other person, the property of the bankrupt, of whatever kind it be, and should they do so in their own name or in the name of another the property purchased under this prohibition shall be confiscated, for the benefit of the bankruptcy assets; the purchaser being obliged to pay the price, if he should not have done so.

1196). ART. 1175. The syndics shall institute and continue, with the previous knowledge of the Judge, the civil actions in which the bankrupt is or may become a plaintiff.

1185 subdivision 3, 1165.

1197). ART. 1176. The bankrupt shall give the syndics all the information and data they may demand of him and which he may have concerning the operations and interests of the bankruptcy. The same syndics may employ the bankrupt in the work of administration and liquidation, under their dependency and liability.

1198.

1198). ART. 1177. The bankrupt has in his turn the right to demand of the syndics, through the Judge of the bankruptcy, the information he may desire regarding his business, and to make such observations to them, through the same channel, as he may deem proper with regard to improvements in the administration and the liquidation of the assets and liabilities.

1199). ART. 1178. The Judge shall not permit the syndics to retain in their possession the cash funds belonging to the assets, but shall

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\* Art. 1200 cited, is ordinal art. 1221.



oblige them to deposit weekly all that they may have collected, leaving them only such amount as the Judge may deem sufficient to attend to the current expenses of the administration.

1167.

1200). ART. 1179. The syndics shall present monthly to the Judge a statement of the administration of the bankruptcy for such action as may be proper for the benefit of the persons interested therein.

All the creditors requesting it, may obtain at their expense, copies of the statements submitted by the syndics, and state in view thereof all that they may deem advisable in favor of the interests of the assets.

1201). ART. 1180. At the instance of the syndics the Judge may direct the transfer of the funds from the deposit chest to any bank, savings institution or other similar establishment which there may be in the republic.

1167.

1202). ART. 1181. The syndics shall take care that, under their liability all formalities which may be necessary for the preservation of the rights of the bankrupt be observed with regard to bills of exchange, public instruments, effects of credit, and any other document belonging to the former.

1203). ART. 1182. Bankrupts who are entitled under the law to maintenance from the property composing the assets, shall petition the Judge for the assignment of an allowance for support, which the Judge shall fix at a reasonable figure, the respective incidental issue being first instituted and decided.

An appeal in a devolutive effect only shall lie from the decision rendered in such case assigning the allowance.

1204). ART. 1183. The Judge shall draw in favor of his Secretary upon the depositary or syndic of the bankruptcy, for the sums required for the indispensable judicial costs for the prosecution of the proceedings.

1205). ART. 1184. The property of the bankrupt having been attached, deposited and appraised, the Judge shall immediately direct that it be advertised and sold in the manner prescribed in articles 1061 and 1071 for advertisements and sales in executory actions, excepting only the property claimed under an action of ownership, which property shall not be advertised nor sold unless it be declared to belong to the assets of the bankruptcy.\*

1206). ART. 1185. Upon the termination of the thirty days fixed in the edicts calling the meeting, the Judge shall, *ex proprio motu*, take

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\* Arts. 1061 to 1071 cited, are the following: ordinal arts. 1036, 1038 to 1042, 1045, 1046, 1047, 1051 and 1052.

evidence in the cause for a term of forty days, which term can be extended only by the necessity of taking the evidence in a place beyond that of the proceedings, the proceedings being had in accordance with the provisions of articles 957 and 958.\*

1153 subdivision 3.

1207). ART. 1186. Upon the expiration of the probatory term, the Secretary shall announce it, without the necessity of a petition to that effect; and the Judge shall immediately set a term of twenty days for the parties, their attorneys in fact or patrons (*patronos*) to examine the record in the office of the Secretary and prepare their pleadings which they shall submit during this term.

1208). ART. 1187. Upon the expiration of the twenty days set for pleading the Secretary shall announce it *ex proprio motu*, and the Judge shall direct that citation for judgment issue, which he shall render within the next twenty days, qualifying and graduating the credits which may have been allowed in the proceedings.

333, 334.

1209). ART. 1188. The national tribunals and courts shall in bankruptcy proceedings the cognizance of which pertains to them, graduate the credits of the creditors, in so far as they do not bear any relation to the Fisc, by applying the substantive legislation in force in the respective State at the time of the acquisition of the credit.

1213.

1210). ART. 1189. The formalities required by the legislation of the States for the validity of the documents establishing the credits, shall also be taken into consideration to decide upon the existence of said credits.

1211). ART. 1190. Judgment having been rendered, it shall be published within twenty-four hours, by means of an edict which shall remain posted for five days, upon the expiration of which notice of the judgment shall be considered as served.

1219.

1212). ART. 1191. A party desiring to appeal, must do so within five days, from the date of service of notice of the judgment.

1213). ART. 1192. If a credit of the Nation should be rejected, or if in view of its location it cannot be paid in full, the judgment of first instance

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\* Arts. 957 and 958 are ordinal arts. 875 and 876.

must be submitted for consultation to the Federal Supreme Court, if it should not be necessary for it to go up on appeal.

1209.

1214). ART. 1193. The appeal shall be allowed or denied in view of the record, which record shall be transmitted, in the first case, to the Federal Supreme Court, after citation of the parties.\*

1215). ART. 1194. The cause having been received and assigned in the Court, the person hearing it shall direct, by means of an order of mere practice, that the parties be informed thereof; and if any of them should request, within five days after notice of the order, that evidence be taken in the cause, such evidence shall be received for a term which shall not exceed twenty days.

1216). ART. 1195. If none of the parties should request that evidence be taken in the cause, the Secretary shall so report, as well as the fact of the probatory term having terminated, in the case of the preceding article; and the Justice taking cognizance of the proceedings shall issue a rule ordering the citation of the parties for judgment, and fixing one of the five days following for a hearing of the parties in the court room, where such parties may argue verbally, or present their arguments in writing.

1217). ART. 1196. Within twenty days following the last of the arguments, the Court shall render judgment, and for the purpose of its notification and execution the return of the record to the lower court shall be ordered.

333. 334.

1218). ART. 1197. In the decision at second instance, the justice and legality of that rendered at first instance shall be examined, with regard to the right and graduation of each and every one of the creditors.

1219). ART. 1198. In these proceedings there are no personal notifications or citations, with the exception of those prescribed in the fourth paragraph of article 1132. All rulings and decisions shall be made known by means of edicts, which shall remain posted for a term of forty-eight hours, upon the expiration of which the respective notification shall be understood as made. The final judgment is excepted, with regard to the publication of which the provisions of article 1190 govern.

In the edicts the day and the hour they are posted and removed shall be stated.†

199.

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\* When the Nation is interested.

† Arts. 1132 and 1190 cited are ordinal articles 1153 and 1211.

1220). ART. 1199. To an absent debtor who, being summoned in legal form, should not enter an appearance either in person or through an attorney in fact, the Judge shall appoint counsel to represent him in the proceedings.

1221). ART. 1200. All incidental issues brought up in these proceedings shall be conducted in a separate record, the petition instituting it being referred to the parties, for a period of six days, within which said parties may present their arguments, and upon the expiration of such term, the Judge or the Court shall render judgment within the next three days.

584.

1222). ART. 1201. An appeal shall be allowed from the interlocutory judgments rendered in these proceedings, from which an appeal lies in accordance with the general rules, provided that such appeal be interposed within forty-eight hours after service of notice of the judgment.

783, 784, 785, 787.

1223). ART. 1202. When the appeal from an interlocutory judgment is granted, only the record in which the decision appealed from shall have been rendered shall be forwarded to the higher court unless such court should deem it necessary to have other papers before it in order to render judgment; and the bankruptcy proceedings shall be continued to be heard in the first instance, provided that the judgment appealed from does not affect the main issue.

1224). ART. 1203. Whenever proceedings are being had in another court against the property, rights and actions of the bankrupt debtor, the proper letters rogatory shall be issued in order that the cause may be transmitted to the Judge of the bankruptcy proceedings.

638, subdivision 3.

1225). ART. 1204. The petitions and proofs of each of the creditors, as well as the incidental issues instituted, shall be conducted in separate sets of records, paginated and under a superscription specifying their contents.

1226). ART. 1205. The creditor or creditors who shall appear in the bankruptcy proceedings after the termination of the term for which they were called, shall be admitted to the proceedings, without putting back the status of the latter.

1227). ART. 1206. In the event of the bankruptcy of a merchant, he shall be qualified in accordance with the respective Code.

1147, subdivision 3, 1148.

1228). ART. 1207. In all cases of fraudulent or culpable bankruptcy, to which a penalty is affixed, the guilty persons shall be proceeded against in a separate criminal action, *ex proprio motu*, or on the petition of any of the creditors or of the syndics.

1149.

1229). ART. 1208. As soon as the definitive judgment shall become final and duly recorded, the Judge shall make the following orders, which shall terminate the bankruptcy proceedings:

1. The appraisal, by experts, of the judicial costs.
2. The raising of the attachment and the delivery, in a proper case, of the property claimed in an action of ownership, which may not have been declared to belong to the bankruptcy assets, with its fruits and appurtenances.
3. The advertisement and public sale of the property which may have been declared to belong to the bankruptcy assets or to the mass (*masa*).
4. The liquidation of the bankruptcy, as soon as all the property shall have been sold; this liquidation shall be an account in which shall figure, on one side, the existing funds, and on the other, the debts which are to be satisfied therewith, according to the order established in the judgment.
5. The designation of a brief period within which the syndic is to prepare said liquidation.
6. The approval of the liquidation, after the proper incidental issue, in accordance with article 1200.\*
7. The issue of the respective orders of payment in favor of each of the creditors, drawn on the syndics, and
8. The cancellation of the public instruments, which have become ineffective by reason of the proceedings had and the conclusions reached in these proceedings.

1230). ART. 1209. Upon the liquidation of the bankruptcy being concluded, the syndics shall render an account of their administration, and in order to approve it the Judge shall hear and determine the incidental issue in accordance with article 1200.†

1231). ART. 1210. When the syndics or any of them should cease in this office before the liquidation of the bankruptcy, they shall likewise render their accounts within a brief period, and the approval thereof shall be given as prescribed in the preceding article.

1232). ART. 1211. If the depositaries or the syndics should not comply with their duty of rendering their accounts within the time in which they are required to do so, any of the creditors has the right to demand the indemnity of the loss and damage in favor of the bankruptcy estate.

1193.

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\* Art. 1200 cited is ordinal art. 1221.

† Art. 1200 cited, is ordinal art. 1221.

1233). ART. 1212. When one or more of the mortgage creditors should request that special bankruptcy proceedings be instituted against a mortgaged estate, the Judge shall grant this petition, observing the provisions of this Chapter which may be applicable thereto in the decision thereon.

1234). ART. 1213. If there should be in the bankruptcy creditors of the first class, according to the substantive laws, the mortgage creditors shall not be paid with the mortgaged estates nor with the product of the latter, unless they shall consign or give bond in a reasonable amount for the payment of the credits of the first class, in that part which might fall to that which the mortgage creditors may receive on account of their credits, and to return to the bankruptcy assets what may remain over, after their claims shall have been covered.

2494, 2495, 2496, 2498, 2500, 2501, of the Civil Code.

1235). ART. 1214. When in bankruptcy proceedings one or more of the creditors of the common debtor shall sell at auction some of the property of the latter, as privileged creditors, and in the decree of graduation they should not be granted the preference, they must return to the mass, not only the amount for which they sold the property, but also the interest on said sums, computed at the rate of six per cent per annum, from the day delivery of said property was made to them, until they return the principal to the mass.

The rule established in this article is applicable both to a case in which the amount for which the creditor or creditors made the sale is equal to their respective credits, as to a case in which the amount of the sale is greater or less than the credits of the vendors.

1057.

### THIRTY-SIXTH AMENDMENT.

(Of Law 46 of 1876.)

1236). ART. 1215. The National tribunals in bankruptcy proceedings the cognizance of which may pertain to them shall classify the credits of the creditors in so far as they bear no relation to the Fisc, applying the substantive legislation in force in the respective State at the time of the acquisition of the credit.

1209, 1210.

## CHAPTER III.

*Proceedings relative to successions mortis causa.*

## FIRST SECTION.

*Opening and publication of testaments.*

1237). ART. 1216. The Judge of competent jurisdiction to decree the opening and publication of a testament, is the one of First instance of the place of the last domicile of the testator, without prejudice to the use of the legal exceptions, and reserving always special provisions.

Subrogated by the following:

1238). ART. 44 of Law 100 of 1892. The Judge of competent jurisdiction to decree the opening or publication of a testament, is the Judge of the Circuit in which the testator had his last domicile, and the proceedings may be delegated to the Judge of the Circuit in which it was executed.

1239). ART. 1217. Upon the presentation to a Judge of a testament for its opening or publication, with the legal proof establishing the death of the testator, he shall set a day and hour for the opening or publication, and shall in the same rule order the summoning of the witnesses and of the Notary, in a proper case, to secure which appearance the Judge may avail himself, in a necessary case, of the same compulsory process used to secure the appearance of witnesses in a suit.

1257, 1258, 460.

1240). ART. 1218. Upon the arrival of the hour set, the Judge accompanied by his Secretary and the interested persons who may have attended, shall proceed to examine the witnesses and the Notary, and publish and open the testament, all in accordance with the provision for such acts contained in the substantive laws of the Nation; the recording shall then be ordered of the testament as well as of all the proceedings had in connection with its opening and publication.

1259, 1260.

The following article is supplemental:

1241). ART. 45 of Law 100 of 1892. The depositions of the witnesses who may have to be examined in the proceedings for the opening or publication of a testament shall be taken separately.

1242). ART. 1219. If several testaments of the same person should be presented, all shall be opened.

1243). ART. 1220. If any one should oppose the opening or publication of a testament, by objecting to the jurisdiction of the Judge, by

affirming the existence of the testator, or pleading some other ground, the written objection shall be referred, together with the full proof which must have been attached thereto of the act upon which it is based, to the person who may have presented the testament, who must make answer within forty-eight hours; upon answer having been made, the Judge, *eo instanti*, shall decide whether or not the act of opening and publication shall take place.

1244). ART. 1221. If a decision in the affirmative should be appealed from, the appeal shall be granted in a devolutive effect only.

Amended by the following article:

1245). ART. 46 of Law 100 of 1892. An appeal in the case of article 1221 of the Judicial Code shall be granted in a suspensive effect.\*

1246). ART. 1222. The decision rendered in accordance with the preceding articles, is not an obstacle to the question of the validity of the testament being made the subject of an ordinary action.†

1247). ART. 1223. Any person who may have in his possession an open or closed testament, the former executed without the attendance of a Notary, is obliged to present it to the Judge of competent jurisdiction, as soon as he shall know of the death of the testator, in order that it may be opened or published, and in either case, in order that it may be filed in the protocol.

1248). ART. 1224. Any person interested in a testate succession, the testament of which another person has in his possession, has the right to demand that the latter produce it before the Judge of competent jurisdiction, being obliged to attach to his petition, which must be in writing, the legal proof of the death of the testator, and, if possible, the summary proof of the testament being in the possession of the person of whom it is demanded.

1247, 1252 to 1255.

1249). ART. 1225. If to the petition for production there should be attached the summary proof referred to in the last part of the preceding article, the Judge shall immediately order the production of the testament, within a reasonable term fixed by him, warning the person who holds it that if he shall fail to produce it, he shall become unworthy by such act from succeeding the deceased, either as heir or as legatee; and that he will be required to pay, in addition, the damages caused by the improper retention of the testament.

1250). ART. 1226. If upon the expiration of the term treated of in the

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\* This article is not believed to have been subrogated by article 1244 of order because from the tenor of this article it may be inferred that a decision in the negative may be appealed from in a suspensive effect.

† The *preceding* articles referred to herein, are ordinal articles 1243 and 1244.



preceding article, which can be extended only for a legitimate cause pleaded before its termination, the testament should not have been produced, the Judge shall declare the person withholding it to have incurred the penalty decreed.

1251). ART. 1227. Decrees issued by virtue of the provisions of the two preceding articles, may be appealed from in a devolutive effect only, and they are not an obstacle to the question of the existence of the testament in the possession of such or such a person being made the subject of an ordinary action.

1253.

1252). ART. 1228. If to the petition for production there shall not have been attached the summary proof establishing the retention of the testament by the defendant, the petition shall be referred to the latter for twenty-four hours, in order that he may state whether or not he has the testament in his possession.

1248.

1253). ART. 1229. If the defendant should reply that he does not have the testament, the petition for the production thereof shall be filed, without prejudice to the institution of an ordinary action in order to endeavor to obtain it.

1251.

1254). ART. 1230. If the defendant should reply that he has the testament and should not produce it, he must state in his answer the reasons which he may have to oppose the opening or publication of the testament accompanying the summary proof upon which he bases his opposition, which shall be heard and decided as prescribed in article 1220.\*

1255). ART. 1231. The decision of the Judge in this case, directing the production of the testament, may be appealed from in a devolutive effect only.

1256). ART. 1232. Upon the closed testament having been opened, it shall be placed in the protocol of the Notary who authenticated its execution; and the open testament, after having been published shall be placed in the Notarial office of the district in which it may have been executed.

1257). ART. 1233. A testament having been presented for its opening or publication, the Secretary of the Court shall make a note at the foot of the instrument presenting it, stating the condition in which the testa-

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\* Art. 1220 referred to herein, is ordinal article 1243.

ment may be, and it shall be rubricated by the Judge, his Secretary and the person who presented it.\*

1258). ART. 1234. The act for the opening and publication of the testament shall take place the same day of its presentation, or not later than the following day.

1259). ART. 1235. If the Notary or any of the witnesses should not acknowledge his signature, or should deny some other points which are the subject-matter of the interrogatory, the publication of the testament shall not be made without a previous ordinary action, which any of the persons interested in the succession may institute, the purpose of which shall be to pass upon the question of the validity of the testament.

1240, 1241.

1260). ART. 1236. The identification of the dead or absent testamentary witnesses shall be made by proving: 1. That the witnesses were present at the place and time the testament was executed, and 2. That the signatures are the same that the witnesses ordinarily used. When it shall be necessary to identify the signatures of the testator or of the Notary, it shall be done by establishing by the statement of witnesses, that said signatures are those of the persons they express according to the knowledge that said witnesses have thereof.

## SECTION SECOND.

*Judicial measures to prevent the misplacement or the loss of hereditary property.*

1261). ART. 1237. As soon as a national Judge of first instance shall have notice by the denunciation of the respective agent of the Department of Public Prosecution (*Ministerio Publico*) that a person has died without leaving an executor, spouse or heirs, and that in this succession the Nation is interested as heir, legatee or creditor, he shall proceed to the place where the death took place, and after convincing himself of this fact by the statements of those who lived with the deceased, of his neighbors or of other persons, he shall proceed to take the following steps:†

1. He shall examine the papers of the deceased to ascertain whether he has left a testament or intestate heirs.

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\* Art. 1053 of the Judicial Code of Cundinamarca, which is similar hereto, and which was without doubt considered in writing the articles we comment on, clearly provides that the testament presented be rubricated, and not the note which may have been written. In our opinion this is what should be done. (*Angarita.*)

† At the present time the measures mentioned must be taken, even though the Nation have no interest whatsoever in the succession. (*Angarita.*)

2. If no testament should be found in the examination, the Judge shall order that the Notary or Notaries of the respective Department or Circuit certify whether the person whose succession is in question executed a testament before any of them.

3. He shall examine the relatives and friends of the deceased for the same purpose of discovering whether the said person executed a testament or not, and whether he left heirs.

4. With the same end in view, the physician, confessor and the attendants of the person whose succession is in question shall also be examined.

5. He shall keep under lock and key, and seals the doors, of the furniture and papers of the succession, with the exception of the furniture of domestic and quotidian use, when the deceased shall have lived with other persons.

6. He shall make a list of the last named furniture, which shall be signed by the persons in whose possession it may be.

7. He shall issue the letters rogatory necessary in order that similar measures may be taken with regard to the property of the succession which is known to exist in other Districts; and

8. He shall place a guard, if he believes it necessary, for the custody of the property of the succession.

Law 170 of 1896, article 15, subdivisions 10 and 11.

The following article is supplementary and amendatory:

1262). ART. 247 of Law 105 of 1890. The Judges of Circuits and municipal districts shall carry out the provisions of article 1237 of the Judicial Code when the matters referred to in the said article shall in any manner come to their notice, without it being necessary that a denunciation by the Agents of the Department of Public Prosecution be first made.\*

1263). ART. 1238. If the deceased should be a foreigner, the Judge shall cite the Consul of the Nation of such foreigner if there be one in the place where the measures referred to are to be taken, in order that he may be present thereat, if he so desires; but the non-attendance of the Consul shall not prevent the execution of the measures.

1266.

1264). ART. 1239. After the measures referred to in the preceding articles shall have been carried out, the Judge, after a hearing of the respective Agent of the Department of Public Prosecution, who must make answer within twenty-four hours, shall issue a decree within the next three days, declaring the inheritance vacant, if no testament should have appeared nor any heirs discovered.

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\* Article 1237 herein cited, is ordinal article 1261.

But if before this, at any stage of the proceedings, an heir should appear establishing that he is such, or an executor to whom the testator may have conferred the seizin of the property of the inheritance, such property shall be turned over to him at his request, the proceedings being suspended *ex proprio motu*.\*

1265). ART. 1240. The decree declaring the inheritance vacant, shall contain, furthermore.

1. The appointment of a curator to the inheritance.
2. An order directing the posting of edicts, calling those who believe themselves to have an interest in the succession.

1269.

3. An order that there be presented to the said Judge the testament or testaments which the deceased may have left.

4. An order for the citation of the executor so that he may accept or renounce the trust when there is known to be one, in the place of his residence; and

5. An order that in one of the newspapers of the place, if there be any, and especially in that having an official character, the said decree be inserted for three consecutive times.

1266). ART. 1241. If the succession should be that of a foreigner, the Judge shall appoint as curator to the inheritance the person that the Consul of the Nation to which the deceased belonged may indicate, if such person should be suitable and responsible, in the opinion of the Judge.

1263.

1267). ART. 1242. As soon as the curator shall have been sworn into office, all the property and papers of the succession shall be turned over to him under a judicial inventory, for which purpose the Judge shall issue the proper communications to the Judges who may have taken part therein up to that time.

1268). ART. 1243. The curator shall defray the expenses necessary for the custody and preservation of the property of the succession.

1269). ART. 1244. The summoning edicts shall be posted in the place where the proceedings are being held, where the death occurred, and in the last domicile of the person whose succession is in question, and for the term which the Judge shall fix, which cannot be under thirty days, nor more than one year.

1265, subdivision 2.

1270). ART. 1245. The decree declaring an inheritance to be vacant,

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\* The preceding articles, referred to herein, are ordinal articles 1261 and 1263.

and those consequent thereupon, can be appealed from in a devolutive effect only, and the appeal shall be heard and decided as an appeal from interlocutory decrees.

783 *et seq.*

### SECTION THIRD.

#### *Petition of Inheritance.*

1271). ART. 1246. Any person believing himself entitled to the property of a vacant inheritance, must appear to avail himself of his rights before the Judge who may have made such declaration, within the term which may have been fixed in the edicts.

1264, 1269, 1272 to 1279, 1284.

1272). ART. 1247. The petitioner must attach to his petition the evidence of his right, if it should not appear on the face of the record.

1273). ART. 1248. Said petition shall be referred to the Agent of the Department of Public Prosecution who may have taken part in the opening of the succession, who must make answer thereto within three days.

1274). ART. 1249. After the Agent of the Department of Public Prosecution shall have been heard, if the proof upon which the petitioner bases his right should be complete, the Judge shall declare the petitioner to be the heir, and shall order that the property and papers of the succession be delivered to him, without prejudice to third persons.

1284.

1275). ART. 1250. If the petitioner should fail to attach to his petition the proof referred to, the petition shall be reserved for action after the expiration of the term of the edicts.

1269.

1276). ART. 1251. Upon the expiration of this term, an ordinary action shall be instituted with the Agent of the Department of Public Prosecution.

1277). ART. 1252. If during the term of the edicts two or more persons should appear, each of them claiming a right to the entire succession, to the exclusion of the others, whether they shall have transmitted proofs or not, all the petitions made shall be reserved until the conclusion of the term referred to.

1278). ART. 1253. Upon the termination of the term of the edicts, in the case of the preceding article, the Judge shall order that each of the petitions be referred to each of the petitioners, reciprocally, for a single

term, and without the records being removed from the office of the Secretary.

1279). ART. 1254. Whether answer be made or not, an ordinary action shall be prosecuted to its conclusion, the Agent of the Department of Pubile Prosecution being always considered a party.

1271.

1280). ART. 1255. In any other case in which an action by petition of inheritance is instituted, it shall be exercised according to the procedure of ordinary action, without any special proceedings.

1281, 1284.

1281). ART. 1256. Notwithstanding the preceding provisions, he who, within one year of the death of a person, should establish his right to an inheritance occupied by another, shall have the summary action mentioned in the following article, for the adjudication of the inheritance to him, and for the restitution to him of the hereditary things of all kinds, and even of those of which the deceased was the mere holder, as pledgee, bailee, lessee, etc., and which shall not have returned legitimately to their owners.

1284.

1282). ART. 1257. The person claiming the inheritance, or a part of it, in the case of the preceding article, shall appear before the Judge with the necessary evidence, and the latter shall order that a copy of the petition be served upon the alleged detainer of the inheritance, or of the part thereof sued for, admonishing him to make answer thereto within five days, and, within such time, to present the proof of his right to the possession of the hereditary property.

Upon the expiration of the term to make answer to the petition, the Judge, without further proceedings shall, within three days, order the inheritance or the part thereof claimed, to be delivered to the heir, if the defendant should have failed to present a legal title for his possession. A devolutive appeal only lies from this decision, and it is not an obstacle to each of the parties availing himself of his rights in an ordinary action.

1283). ART. 1258. The summary proof which the plaintiff must accompany in the said case of petition of inheritance or part thereof shall relate to positive acts, from which the Judge can deduce the right under which the action is brought, and the possession of what is claimed shall be granted *pro indiviso*, if the petitioner should not be the only heir.

1282.

The following article is supplemental:

1284). ART. 248 of Law 105 of 1890. Any person believing that he has a right to the inheritance, whether it shall have been declared vacant or not, may enforce it summarily before the respective Circuit Judge. The petitioner must present the proof of the death of the person whose heir he claims to be, and the proof upon which he bases his claims. The Judge, after having heard the opinion of the agent of the Department of Public Prosecution, shall make the declaration of heirship, without prejudice to third parties if the documents presented should prove that he is such heir.

In intestate successions, deferred under the operation of prior laws, in no case shall individuals other than those to whom the inheritance would have been deferred under said laws be recognized as heirs; this is not contrary to the actions for amendment in testamentary successions.

1299.

1285). ART. 1259. Suits instituted for the purpose of securing the payment of testamentary or hereditary debts, shall be heard in separate proceedings, unless bankruptcy proceedings should lie, in accordance with the provisions of Chapter 2, Title XI of this Book.

1304. 1321 to 1326 of the Civil Code.

#### SECTION FOURTH.

##### *Inventories and Appraisements.*

1286). ART. 1260. When any person who, in accordance with the substantive civil laws has the right to request the making of an inventory, should desire to exercise this right, he shall apply to the Judge of competent jurisdiction, according to article 1216, requesting that said official prepare the inventory if it is to be a judicial one, or that he grant permission for it to be made, if it is to be an extrajudicial one. The person making this petition must attach to his petition the proof of who are the heirs or their representatives.

The inventory shall be a judicial one when among the heirs there should be one or more absent, or under twenty-one years of age, or persons under interdiction, in accordance with the substantive laws.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the two following:

1287). ART. 249 of Law 105 of 1890. Any person having the right to demand the preparation of inventories, and desirous of exercising it, shall appear before the Circuit or District Judge of competent jurisdiction to take cognizance of the succession proceedings, and shall request

that said Judge prepare it, if the inventory is to be a judicial one, or, otherwise, that he grant the petitioner the proper permission to have it made extrajudicially. To said petition he shall attach the proof of who are the heirs or their representatives, and of the death of the persons whose succession is involved. This proof may consist of the summary testimony of competent witnesses.

1238, 1311.

1288). ART. 250 of Law 105 of 1890. In succession proceedings a judicial inventory shall be made when there shall be one or more of the heirs absent and having no representatives, when they may be under twenty-one years of age, or when they are under judicial interdiction.

1289). ART. 1261. In any case, the judge shall decree the formation of the judicial inventory or shall grant permission for an extrajudicial one to be made, with the citation of those who have a right to be present at this proceeding, according to the substantive laws. This citation shall be personally served upon the interested persons present, by edict upon those absent, and personally upon the representatives of the heirs whose portion of the inheritance may be vacant on account of their non-acceptance thereof.

1288, 212, 1303, 1307, 1310, 1313.

The two articles which follow are supplemental:

1290). ART. 251 of Law 105 of 1890. If there should be minors without a legal representative in the succession proceedings *mortis causa*, it shall be sufficient that there be assigned them, or that they appoint, a curator *ad litem*, to intervene in the name of the minors in all the proceedings which may be had.

64.

1291). ART. 252 of Law 105 of 1890. The extrajudicial inventory shall be made before two competent witnesses, appointed by the heirs present or by their representatives, and by the Judge of the cause in case of disagreement.

1310, 1313.

1292). ART. 1262. The decree ordering the formation of the judicial inventory, shall set the day and the hour when it is to be begun.

1293). ART. 1263. Upon the arrival of the day and hour set, the Judge with his Secretary and the persons interested who may wish to be present at the act shall betake themselves to the place where the property may be situated; the holder thereof shall take an oath to designate all the property of the inheritance which may be in his possession or of



which he may have knowledge, and shall cause the Secretary to write down, with the proper clearness and detail, the list of the property which the holder thereof may enumerate, or of which the heirs present may have knowledge.

1299.

1294). ART. 1264. After the list shall have been made, the property shall be appraised by experts appointed by the heirs or their representatives.

1295). ART. 1265. The number of these appraisers cannot exceed three; and if the persons interested should not agree as to the appointment, or if the appraisers should not agree as to the appraisalment, the provisions of articles 655 and 659 shall be observed.\*

1296). ART. 1266. If the inventories cannot be finished at a single session, each of the sections which it may be necessary to make shall be prepared separately, a memorandum being made at the beginning of the section of the persons who were present as interested parties, who shall subscribe thereto together with the Judge and the Secretary.

1297). ART. 1267. For the formation of the judicial inventory of the property situated in places other than that where the succession is situated, the Judge shall commission the Judges of the said places.

#### THIRTY-SEVENTH AMENDMENT.

*(Of Law 46 of 1876.)*

1298). ART. 1268. The property which may be in the hands of a third possessor shall be placed separately in the inventory; and the Judge shall not order said property to be turned over to the heirs and legatees unless it be proved that it belongs to the inheritance and after hearing the possessor. If the latter should not consent to the delivery thereof and should plead some reason thereof, the delivery shall not be ordered until a judicial decision shall so direct.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following.

1299). ART. 253 of Law 105 of 1890. In the inventories of the property of deceased person there shall be stated separately that which is in the hands of a third possessor, and the Judge shall not order it turned over to the heirs and legatees, until summary proof shall be adduced that it belongs to the inheritance, and after the holder thereof shall have been heard. If the latter should refuse to deliver it, pleading sufficient legal cause, the order for delivery shall not be renewed until the matter shall be decided judicially.

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\* The articles cited are ordinals 489 and 493.

The private property of the surviving spouse, acquired by him or her during the marriage, shall not be included in the inventories, nor shall it be subject to partition, if in accordance with the laws in force at the time of the acquisition of such property it became his exclusively.

1284, second paragraph.

1300). ART. 1269. Upon the inventory being concluded, the Judge shall order that it be referred to all of the parties interested, by means of an edict which shall remain posted for three days, in order that within the six days after its removal they may state what they may deem advisable.

1308, 1309, 1313.

1301). ART. 1270. Upon the expiration of the last term, the Judge who ordered them made shall approve them and send them for filing in the protocol of a Notarial office of the place where they were made, if they should conform to the legal prescriptions.

1310, 1307, 1308, 1309, 1314, 1315, 1312.

1302). ART. 1271. The actions which may be instituted charging the concealment or the improper inclusion of certain property in the inventories, shall not prevent the approval of the inventories, if they appear properly prepared, nor shall they, in a proper case, prevent the partition of the property among the assigns or participants; but if property should have been improperly included therein, the participant or participants to whom the property alleged to be improperly included in the inventory may fall, shall be obliged to secure under bond, to the satisfaction of the Judge, the return of such property if the inheritance should be declared not to belong to them.

The proceedings in which these rights of action are exercised shall be conducted separately with the persons interested directly in the concealment or inclusion.

The twelve articles which follow are supplementary and amendatory :

1303). ART. 254 of Law 105 of 1890. The creditors in succession proceedings have the right to attend the preparation of the inventories and appraisalment of the property of the succession upon presentation of the title of their credit, or when the heirs shall have notice of the latter and should not object thereto.

In order that the partitioner may comply with the provisions of article 1393 of the Civil Code, mention shall be made in the inventories of the credits charged against the succession, but only of those in which any of the following circumstances are attendant :

1. That all the co-assigns acknowledge the legitimacy of the credit ; or
2. That the title presented by each creditor be of those which the law requires as ground for the issue of a writ of execution.

1289.

1304). ART. 255 of Law 105 of 1890. The creditors may summarily exercise the action on the benefit of separation of property, if the title of their credit should carry execution. The separation having been requested, an incidental proceeding shall be had in which a decision shall be rendered in view of what may have been alleged and proved.

In other cases the creditors may have recourse to the ordinary channels for the purpose of obtaining the said benefit.

1305). ART. 256 of Law 105 of 1890. If there should not be an executor who has accepted the trust and who has the seizin of the property, and the heirs should not agree as to its administration, the Judge must order, after an incidental hearing, that the co-assigns appoint on or before the third day a depositary for the property of the succession. Should they fail to do so or not agree as to the appointment, the Judge shall make the appointment, shall give him possession and shall deliver to him the property upon the inventory being made, or under such inventory if already made.

In the case of this article, the Judge shall deliver the property to the heirs when all should agree; otherwise, he shall keep it in deposit until, after the partition shall have been made, he makes the order approving it, referred to in article 1291 of the Judicial Code.\*

1306). ART. 257 of Law 105 of 1890. When through forgetfulness, inability or ignorance of the existence of the property in a succession, some interested person or heir requests the preparation of an additional inventory, before or after the partition of the property first inventoried, the second inventory or appraisal of property shall be prepared by the same Judge of the cause, with the observance of the provisions governing inventories, whether judicial or extrajudicial.

1307). ART. 258 of Law 105 of 1890. In the Departments in which successions are charged with taxes in favor of said Departments or any entity whatsoever, it shall be understood that the cause of the contribution is the fact of the transmission of the property of the deceased to the assigns, and, consequently, that the tax pertains, in every case, to the Department in which the succession is opened, whatever be the place in which the property may be situated.

In succession proceedings the official having charge of the collection of the tax shall be a party to the proceedings until such tax is paid.†

Law 170 of 1896, 2, 6, 9, 14 and 15.

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\* Ordinal article 1338.

† This article subrogates article 21 of Law 30 of 1888.

1308). ART. 259 of Law 105 of 1890. Upon the conclusion of the inventories and appraisal the record shall be forwarded to the Collector, for a period of three days, in order that he may make the respective liquidation. Upon the latter having been made, it shall be referred to the persons interested and to the agent of the Department of Public Prosecution, for twenty-four hours to each, in order that they may object thereto in so far as it may appear to them to be illegal or incorrect. If the persons interested and the agent of the Department of Public Prosecution should accept the liquidation, the Judge shall approve it; but if they should object thereto, he shall hear and determine the point in accordance with the procedure established for interlocutory issues in ordinary actions, approving the liquidation or ordering that it be remade if there is legal cause for such order. In the latter case, after his decision shall have become final, the record shall be returned to the Collector in order that his decision may be carried out; and the same shall be done if the decision rendered in the last instance should so provide.

1314, 1315, 1310.

1309). ART. 5 of Law 113 of 1890. In all succession proceedings in which the tax treated of in this Law is to be collected, the provisions of articles 21 to 29 of Law 30 of 1888 (February 25) shall apply; but the liquidation made shall not be referred to the agent of the Department of Public Prosecution.

1310). ART. 260 of Law 105 of 1890. The inventories and appraisements of the property of a succession cannot be approved unless the payment of the tax in the legal form shall be established. If they should be approved without this formality, the Judge shall be liable for the tax.\*

1307, 1308, 1309, 1312.

1311). ART. 261 of Law 105 of 1890. In successions *mortis causa* in which inventories are not prepared within one year after the death of the person who may have left property in the Department, the respective Circuit Judge shall, with the intervention of the persons interested, either on information or from his own knowledge, prepare *ex proprio motu* judicial inventories written on common paper, for the sole purpose of collecting what may be due the revenues of Beneficence or other revenues.

This provision applies to successions in which inventories shall not have been prepared within the proper time.†

1312). ART. 262 of Law 105 of 1890. The Judge taking cognizance of succession proceedings shall issue an order of payment by executory

\* This article subrogates article 23 of Law 30 of 1888.

† This article subrogates article 24 of Law 30 of 1888.

procedure against the debtors to the Lazareto branch (*ramo de Lazareto*) or the corresponding entity—even though in view of the amount of the taxes he should not be of competent jurisdiction according to the general rules—when such debtors do not make the payment within fifteen days after the approval of the respective liquidation. The writ of execution shall issue on ordinary paper and *ex proprio motu*, or on the petition of any official. If the amount of the tax should be recovered, the Judge shall immediately forward to the syndic of the institution mentioned, or to the person representing the rights corresponding to any other entity, the amount he may have collected.

Law 170 of 1896, article 15, subdivision 6.

1313). ART. 263 of Law 105 of 1890. It is the duty of all Judges before whom succession proceedings are instituted, to cite the Collector of the tax, in order that this official or his representative may take note of the quality of the assigns, appoint appraisers, request that the property of the succession be inventoried and appraised, and object to decisions which may prejudice the revenues.\*

1314). ART. 264 of Law 105 of 1890. In vacant inheritances, the proceedings mentioned in article 259 of this Law as to the curator appointed and the Agent of the Department of Public Prosecution, shall be had.†

1315). ART. 265 of Law 105 of 1890. The liquidation can be objected to in the following cases only:

1. By reason of an error in the numerical operations or in the deduction of the tax.

2. When the value of the hereditary debts legally established shall not have been deducted, as well as what may be due the surviving spouse by reason of private property and acquist and gains, in accordance with the Civil Code and the provisions of this Law; and

3. If the patrimony of the deceased appearing to be confounded with property or active rights belonging to previous undivided successions, or in which other persons have a participation by virtue of a partnership, contract or a similar cause, the Collector should not have confined himself to liquidating the tax only on the property of the estate, provided that the record furnishes sufficient data and proof to fix the amount of the hereditary estate.‡

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\* This article subrogates art. 26 of Law 30 of 1888.

† This article subrogates article 27 of Law 30 of 1888. Article 259 cited, is ordinal 1308.

‡ This article subrogates article 29 of Law 30 of 1888.

## FIFTH SECTION.

*Partition of the Property of the Succession.*

1316). ART. 1272. The partition of the inheritance may be judicial or extrajudicial.

It shall be judicial: 1. When one or more of the participants should be absent or under twenty-one years of age, or persons under interdiction from administering their property; 2. When all the participants agree that it is to be judicial; 3. When the participants do not agree as to the mode of partition.

In other cases the partition shall be extrajudicial.

1288, 1340, 1341. 1374 *et seq.*, of the Civil Code.

1317). ART. 1273. The Judge before whom the succession may have been opened by means of the acts mentioned in the four preceding sections, is competent for the judicial partition.

1318). ART. 266 of Law 105 of 1890. When one or more of the co-assigns representing more than one-half of the divisible mass, should request the suspension of the division of the property until an action already instituted shall be decided, the decision of which may affect more than one-half of said mass, the Judge shall grant the petition accordingly.

1387, 1388 of the Civil Code.

1319). ART. 1274. In the petition for a judicial partition shall be stated the name and the residence of each of the co-assigns or participants, if known, and the title of the heir must accompany it, if it should not appear from the record.

1320). ART. 1275. The petition for partition shall be referred to the participants or heirs for six days each, within which term any person objecting to the petition must present the proofs he may have therefor.

Upon the expiration of the term of the reference, if no answer should have been made, or no one should have objected, or no proofs for the opposition should have been presented by the person making it, the Judge shall decree the partition requested; but if there should be opposition based on proof, even though summary, the Judge shall not decree the partition.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

1321). ART. 267 of Law 105 of 1890. The petition for partition shall be referred to the participants or heirs, for six days each, within which term any person objecting to the petition must present the proofs he may have therefor.

Upon the expiration of the term of the reference, if no answer should have been made, or no one should have objected, or no proofs for the opposition would have been presented by the person making it, the Judge shall decree the partition requested; but if there should be opposition based on proof, even though summary, the Judge shall not decree the partition.

The Judge shall also decree the partition of the property, without referring the petition, in the event that it being requested by all the heirs or participants, there should, therefore, not be any one to whom to refer it.

1322). ART. 1276. The decree of partition may be appealed from in a devolutive effect only.

Said decree, as well as that denying the partition, is not an obstacle to the parties enforcing their rights in an ordinary action.

1323). ART. 1277. The partition having been decreed, the Judge shall in the same decree direct the participants or heirs, within three days after service of notice, to appoint a partitioner to make the distribution and partition of the property of the succession, in accordance with the provisions of the substantive laws.

1318.

1324). ART. 1278. If the heirs should not agree as to the appointment of a partitioner, or should fail to make the appointment within the term fixed, which shall begin to run from the last notification of the decree of partition, the Judge shall make one on the petition of any of them.

1380 to 1383 of the Civil Code.

1325). ART. 1279. The partitioner must be sworn, and the one appointed by the Judge may be challenged in the same manner as any expert.

1385 of the Civil Code.

1326). ART. 1280. The partitioner shall discharge his duties within the term that the Judge may allow him, in view of the extent or amount of the inheritance, and said term shall begin to run from the date of the delivery to the partitioner, which must take place, of the testament, the inventories and other papers necessary for the purpose of effecting the partition.

1389 of the Civil Code.

1327). ART. 1281. Any doubt which cannot be decided by the partitioner, shall be decided by the Judge, with the hearing of the parties, the point being heard and determined as an ordinary incidental issue.

1328). ART. 1282. The partitioner having prepared the liquidation and the partition of the hereditary property, he shall submit his work to the Judge, returning the documents which may have been turned over to him.

1329). ART. 1283. The Judge shall refer all that may have been done to the co-assigns or participants, for such reasonable term as he may fix, in order that they may state whether they agree to the partition made or not.

1330). ART. 1284. If objection should be made to the partition, and the objections should relate to questions of fact, which are established by the record, or upon points of law, the Judge, after citing the parties, shall decide within three days whether the partition should be re-made either in whole or in part.

1332.

1331). ART. 1285. If none of the parties should appeal upon being notified of this order, and if a new partition shall have been decreed, the Judge shall direct the partitioner to make it again within the term which he may set.

The same action shall be taken in the event of the order directing a new partition should have been appealed from and approved by the superior court.

1332). ART. 1286. The partition having been amended in the terms mentioned, the Judge shall approve it, and the same shall be done if all the participants should agree as to its legality, or if the objections made should relate to questions of fact which are not borne out by the record. In the latter case, notwithstanding the approval, the participants objecting may institute an ordinary action for the purpose of securing the nullity and rescission of the partition, for the same causes for which contracts are annulled and rescinded.

1740 *et seq.*, of the Civil Code.

1333). ART. 268 of Law 105 of 1890. The appeals granted from the decisions rendered in accordance with the provisions of articles 1284, 1285 and 1286 of the Judicial Code, shall be heard and decided by the superior court in the same manner as interlocutory decrees.

1334). ART. 1287. The fact of some property having been omitted, is not a cause for the rescission of the partition; that in which the property may have been omitted shall be continued afterwards and the property divided among the participants in accordance with their rights.

1406 of the Civil Code.



1335). ART. 1288. The other participants may object to the rescissory action offering, to the person who may have instituted it the supplement of his portion in cash.

1407 of the Civil Code.

1336). ART. 1289. An action for nullity or rescission cannot be brought by the participant who may have alienated his portion in whole or in part, unless there shall have been error in the partition, or force or fraud, from which he may suffer damage.

1408 of the Civil Code.

1337). ART. 1290. The participant not desirous of, or unable to institute an action for nullity or rescission, shall retain the other legal remedies pertaining to him to be indemnified.

1410 of the Civil Code.

1338). ART. 1291. Upon a partition being approved, the Judge shall order:

1. That it be filed in the protocol of the respective Notary.
2. That a copy of the section relating to him be issued to each of the participants.
3. That there be delivered to each of the participants the property of the succession which may have fallen to him.

1400 of the Civil Code.

1339). ART. 1292. When it shall become necessary to sell something belonging to the succession, upon the sale having been decreed, after a hearing on the issue, it shall be sold at public auction before the Judge taking cognizance of the partition, and in the form prescribed in this Code for the sale of property in an executory action.

1035 *et seq.*

1340). ART. 1293. When the partition can be made extrajudicially, the Judge having granted the permission therefor, the persons interested may themselves prepare the inventories, appraisals and the division, partition and adjudication of the property of the inheritance; and after this shall have been done, if all the heirs should request the approval of the Judge, the latter must extend it and order the proceedings filed in the protocol, in order that the copy of his allotment may be issued to each person interested.

1316, 1341.

1341). ART. 1294. Even though there should be minors among the heirs, the partition may be made extrajudicially, if their father should have permitted it by authorizing the executor or another person whom he may appoint to take part therein.

1316.

#### CHAPTER IV.

##### *Division of common property.*

NOTE.—In view of the complicated and confusing character of the provisions which have been enacted with regard to the division of common property, the pertinent articles have been reproduced here in the following order:

1. All the articles of the Code which constitute this chapter therein.
  2. Articles 38 to 42 of Law 30 of 1888, which are the only ones in force at the present time, in accordance with the provisions of article 39 of Law 100 of 1892—ordinal 1360, and because the other pertinent articles—43 to 98—were expressly repealed by article 87 of the said Law.
  3. The article of Law 105 on the subject.
  4. Finally, articles 39 and 74 of Law 100 of 1892, which are specially in force.
- The following are the articles of the Code:

1342). ART. 1295. When the division of property held in common, not pertaining to a succession, shall be necessary, the co-owner desiring it shall address his petition to the Judge of competent jurisdiction, clearly and precisely stating the property to be divided and the persons between whom it is to be divided, as well as their domicile.

1343). ART. 1296. The Judge shall refer the petition to all the other co-owners or to their legitimate representatives for the ordinary term, in order that they may state whether they agree or not to the division. The co-owners failing to make answer, or failing to do so in the manner stated, shall be understood to agree to the division.\*

1344). ART. 1297. If any person should object to the division, and ordinary action shall be instituted against the latter which shall pursue its entire course.

If the decision rendered in this action should order the division, or if the division should not have been objected to by any of the co-owners, the Judge shall direct them to appoint a partitioner within three days from the date of service of the last notification.

1345). ART. 1298. If the co-owners should not agree as to the appointment of a partitioner, or should fail to appoint him within the term allowed, the Judge shall appoint one on the petition of any of the co-owners.

1350. 1382 of the Civil Code.

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\* Supplemented by ordinal 1357.

1346). ART. 1299. The partitioner must take oath to discharge his duties properly, and the one appointed by the Judge may be challenged for the same reasons as experts.

1347). ART. 1300. The record and other papers necessary to make the partition, shall be delivered to the petitioner and a receipt taken therefor.

1348). ART. 1301. The provisions of articles 1280 to 1291 are common to these proceedings.\*

1349). ART. 1302. When it shall be necessary to ascertain the value of the property to be divided, it shall be appraised by experts, who shall be appointed and who shall discharge their duties in accordance with the provisions of Chapter 6, Title II of this Book.

1350). ART. 1303. When a piece of land is to be divided into material parts, instead of partitioners, surveyors shall be appointed for the purpose, and as soon as the division shall be approved, the Judge shall place each of the persons in possession of the part allotted to him after the setting of boundary marks which shall be made before the Judge and the expert surveyors.

Here follows articles 38 to 42 of Law 30 of 1888, the only articles applicable, in accordance with the provisions of article 39 of Law 100 of 1892—ordinal 1360. Article 37 governs as a provision of a civil character.

1351). ART. 37 of Law 30 of 1888. In the division of common tenements, the provisions of articles 2335, 2336, 2337, 2338, 2339, 2340 of the Civil Code shall be observed.

1352). ART. 38 of Law 30 of 1888. When any of those possessing land in common shall apply to the Circuit Judge for the division and award of the right corresponding to him, the Judge, within twenty-four hours next after the presentation of the petition, shall order that said division be made and that all the co-owners appear in person or through an attorney in fact, within sixty days, and produce the titles of ownership showing in a trustworthy manner the right which each may have in the common property.

1353). ART. 39 of Law 30 of 1888. Notice of the order of the Judge shall be served *ex proprio motu*, personally, upon the persons interested and upon the adjoining owners who may be in the place of the proceedings; and by the means of edicts posted in the capitals of the Circuits, upon absentees. Edicts shall also be ordered posted in the capitals of the districts where co-owners or adjoining owners may reside, when their residence is known and provided that the Districts be not situated at more than thirty miriameters from the capital of the Circuit in which the estate is situated and where the proceedings are being held.

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\* The articles cited are ordinals 1326 to 1338.

1354). ART. 40 of Law 30 of 1888. The edicts shall be posted the same day the division is decreed, in the capital of the Circuit, and shall remain posted for sixty days; in distant Districts they shall be posted for ten days; and in either case, the dates of posting and removal of the edicts shall be recorded. The Judge or Judges commissioned to post the edicts in distant Districts, are obliged to order them posted the same day they are received, and return them *ex proprio motu* upon the very day upon which the period for which they are required to be posted, expires, in order that they may be attached to the record.

1355). ART. 41 of Law 30 of 1888. When the division of an estate held in common is requested, the boundaries, the number and names of the persons known to be interested, the right corresponding to each of them, the places or localities where situated, the servitudes of waters and rights of way which it enjoys or which are a charge thereon, the various kinds of lands, the watering places and waters running there-through, shall be clearly stated.

1356). ART. 42 of Law 30 of 1888. The citation having been made, publicly or personally, all those who believe they have a right to the common estate, shall present, within the eight days next after the removal of the edicts in the place where the proceedings are held, all the documents or titles of former ownership from the person or persons from which the titles of the actual possessors were originally derived, and the documents which clearly establish the right they enjoy. In the petition with which these documents are exhibited, a succinct statement shall be made of the rights leading down from the common origin.

The following are the articles of Law 105 of 1890:

1357). ART. 269 of Law 105 of 1890. If the persons among whom the division is to be made, or any of them, should be unknown to the petitioner, or being known their residence or domicile is unknown, they shall be cited and a defender (*defensor*) assigned them in accordance with the general rules.\*

1358). ART. 270 of Law 105 of 1890. Articles 37 to 90 of Law 30 of 1888 shall be applied, when the division of tenements belonging to communities of natives is involved, in which the following circumstances are also attendant: that the number of co-owners is uncertain or exceeds fifty; that their existence be from time immemorial or more than thirty years, and that the thing held in common is worth more than ten thousand pesos. In other cases the provisions of the Judicial Code and of the additional laws on the subject shall govern.

1359). If the arbitrators referred to in article 44 of the said Law 30 of 1888 should not comply with the duty imposed upon them by article 59 of the said Law within ninety days, in addition to being held liable for

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\*This article supplements ordinal 1343.

the damage which the persons interested may suffer, compulsory process shall be employed by the Circuit Judge who may have taken cognizance of the matter, by the imposition of successive fines up to one hundred pesos, upon a report from the Secretary of the Board of arbitrators, who may also be fined in the same manner, if he should delay rendering the report requested.

The following are the articles of Law 100 of 1892.

1360). ART. 39 of Law 100 of 1892. The method of procedure in the division of common property shall hereafter be that prescribed by articles 38 to 42 of Law 30 of 1888, and 1298 *et seq.*, of the Judicial Code.\*

1361). ART. 74 of Law 100 of 1892. When it shall not be possible to obtain the documents which establish the common origin of an undivided tenement, and the possessors representing titles for two-thirds of the value of the original tenement should request the division of the latter, the Judge shall decree such division which shall be made in accordance with the provisions of law governing the matter.

## CHAPTER V.

### *Surveys and demarcations of tenements.*

1362). ART. 1304. Every owner or usufructuary of real property has the right to demand its survey and demarcation.

1363). ART. 1305. The petition for the survey and demarcation must be presented to the Judge of the Circuit, Province or Territory in which the property to be surveyed may be situated; and if such property should be situated in several Circuits, Provinces or Departments, the Judges of the latter shall take cognizance of said petition, to the exclusion of the others.

1364). ART. 1306. The petitioner must submit with his petition some proof, even though summary, establishing the bounds of his estate.

1365). ART. 1307. The petition shall be referred for three days to each of the owners or usufructuaries of the adjoining tenements.

1372, 1369.

1366). ART. 1308. If the defendants should plead dilatory exceptions, the latter shall be heard and decided as in an ordinary action.

275.

1367). ART. 1309. If such exceptions should not be pleaded, or if those pleaded should be overruled or declared not to lie, whether answer

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\* Articles 38 to 42 of Law 30, and 1298 of the Code, cited, are ordinals 1352 to 1356 and 1345, respectively.

shall have been made to the references or not, the Judge shall set a day and hour for the survey, and shall direct in the same order that the experts who are to take part in the proceedings be appointed; a district Judge may be commissioned to conduct the survey, if all the property to be surveyed should be situated in his district.

1368). ART. 1310. The said Judge, accompanied by his Secretary, by the persons desirous of being present and by the experts, shall indicate the boundaries and cause the respective posts (*mojones*) to be set, after having convinced himself of the identity of the estates, first hearing the experts, and considering the titles of ownership which the owners must present at said proceedings; a full record shall be made of all these facts which shall be signed by the Judge, his Secretary, the experts and the persons interested who may have been present.

1369). ART. 1311. The record mentioned shall be referred again for three days to the owners of the surveyed estates.

1365, 1372.

1370). ART. 1312. Upon the expiration of the terms of reference, if none of the persons interested should object, the Judge shall place each owner in possession of his tenement.

1371). ART. 1313. If there should be opposition on the part of any of the persons interested, either with regard to the survey made or the petition for the survey, the matter shall be heard in an ordinary action, in which the person making the opposition shall be considered as the defendant, without prejudice to the survey being approved and carried out in the terms of the preceding article, as to such part to which there may have been no objection or opposition.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

1372). ART. 272 of Law 105 of 1890. If there should be opposition on the part of any of the persons interested, either with regard to the survey made or the petition for the survey, the matter shall be heard in an ordinary action, in which the person making the opposition shall be considered as the plaintiff, without prejudice to the survey being approved and carried out in the terms of article 1312 of the Judicial Code, as to such part to which there may have been no objection or opposition.

1373). ART. 1314. In the said ordinary action no other documents can be introduced but those presented in the special proceedings for survey, referred to in this Chapter, unless the party desirous of introducing them should swear that he had no knowledge of said documents during the special proceedings mentioned, or that it was impossible for him to present them at that time.

## CHAPTER VI.

*Possessory actions.*

NOTE.—For the purpose of avoiding confusion only such articles relating to these actions are translated, as are still in force. Therefore ordinal articles 1374 to 1412, as they appear in the Angarita edition of the Judicial Code, are omitted.

1413). ART. 1322 of the Code. If a person in possession of a thing should be disturbed therein, he may appear before the Judges of competent jurisdiction and present a formal complaint against the disturber in order that the disturbance may be discontinued and bond given to prevent its recurrence.

The complainant must attach to his complaint the following evidence: 1. That he has been for at least one year in quiet and pacific possession of the thing, in person or through another; and 2. That the defendant is disturbing or molesting him in this possession, it being necessary in such case to specify the acts constituting the disturbance.

1421, 1420. 785, 972 of the Civil Code.

1414). ART. 1323 of the Code. Upon the complaint being thus presented, the Judge shall refer it for forty-eight hours to the defendant, in order that he may present evidence in rebuttal of the charges brought against him, and if he should fail to do so or the evidence should not dispose of the charges, the Judge shall order that the acts of disturbance be stopped, and enjoin the disturber from repeating them, under the penalty of paying a fine of fifty to two hundred pesos in favor of the complainant, and the loss and damage which the latter may suffer. This obligation shall be assured by a bond to the satisfaction of the Judge.

1415). ART. 1324 of the Code. If the disturber should claim to have a better right to the thing than the plaintiff, he may enforce his right in an ordinary action, without prejudice to the provisions of the preceding article.

1416). ART. 1325 of the Code. In cases of disturbance, the mere holder of the thing is obliged to give the proper notice, as soon as such disturbance begins, to the true owner or possessor, in order that the latter may institute proceedings.

Any omission in this regard on the part of the mere holder, renders him liable to the person in whose name he holds the thing.

978, 984 of the Civil Code.

1417). ART. 282 of Law 105 of 1890. There is forcible dispossession: 1. When a person deprives another of the possession of a thing, or of the seizin thereof, availing himself of force; 2. When in the absence of the

possessor, or of the holder, another takes possession of the thing, and upon said possessor or holder returning, he is repelled by force; and 3. When the public authorities, excepting the cases prescribed by law, deprive anyone of the possession or the seizin of a thing, without due process of law.

1418). ART. 283 of Law 105 of 1890. He who sues for the restitution of the thing of which he was forcibly dispossessed must present the proof establishing the possession which he enjoyed, or the seizin, as the case may be, and also the proof of the dispossession. The complaint shall be referred to the defendant, who shall be the person in whose possession the thing may be, for a term of six days, in order that he may make answer and submit evidence in his favor. If the allegations and evidence should show that there has been violent dispossession, the Judge shall, within twenty-four hours, order that the person who had been deprived of the possession or seizin be replaced therein, force being employed if necessary. An appeal interposed from this decision shall be granted in a suspensive effect; but no remedy whatsoever shall be granted from the orders issued in accordance with the decision of the superior court, excepting a complaint and the exercise of an ordinary action for the enforcement of the rights which the person dispossessing may consider that he has.

1420, 1423, 773-785, 980 to 985 of the Civil Code.

1419). ART. 284 of Law 105 of 1890. In case of disturbance of possession, the order which may be issued to cause its discontinuance and to enjoin the disturber from again committing such acts, may be appealed from in a devolutive effect; and, consequently, the decision of the Judge shall be carried out at once, without prejudice to the decision of the superior on the appeal.

1420). ART. 1330 of the Code. In order to establish the disturbance and the violent dispossession, any of the means of proof provided by this Code may be employed. If the testimony of witnesses should be employed, the latter must consist of two depositions taken even without the citation of the other party, but in the ordinary form.

When the violent dispossession is charged against a public authority or official, it shall be established by the report of said authority or official, with a copy of the return or proceeding the basis of the complaint being attached thereto.

This report shall be requested by the Judge before whom the petition is filed, a term being fixed within which it is to be made.

1421). ART. 285 of Law of 105 of 1890. The Judge competent to take cognizance of the complaint relating to the violent dispossession and acquisition of possession, is that of the Circuit in which the realty is situated.

1422). ART. 1333 of the Code. The suit for the recovery of the dam-



ages caused by the disturbance of possession or violent dispossession, shall be instituted and prosecuted before the Judge who may be of competent jurisdiction in accordance with the general rules, and according to the ordinary procedure.

1423.) ART. 1334 of the Code. If possession be involved, the proofs relating thereto shall refer to facts from which the Judge may deduce the right thereto, in accordance with the substantive laws.

785, 972 *et seq.* of the Civil Code.

1424.) ART. 40 of Law 100 of 1892. The purpose of possessory action is the exercise of the possessory rights of action treated of in Titles 13 and 14, Book II, of the Civil Code.

1425.) ART. 41 of Law 100 of 1892. Any person who may be in regular possession of an immovable of which a third person is the mere holder under a lease or any other contract which does not transfer ownership, which may have terminated for any cause whatsoever, may request the Judge of competent jurisdiction that the seizin or judicial possession of the thing be summarily given him, and in support of his petition he shall accompany sufficient proof of the facts upon which he bases it.

1426.) ART. 42 of Law 100 of 1892. The Judge being convinced of the improper retention of the tenement, and that the regular possession belongs to the petitioner, shall order that the holder thereof deliver it to him. Service of this order shall be personally made, and may be appealed from in a devolutive effect only.

1427.) ART. 43 of Law 100 of 1892. If, before the expiration of the term which the Judge may set for the delivery of the tenement, the holder thereof should present to the Judge the proof of a just title which he may have to retain or possess it, the order of ejectment shall be revoked on his petition. But if the holder should permit said term to expire without making any complaint and without vacating the tenement, or if he should fail to produce the evidence authorizing him to retain it, the Judge, on the petition of the petitioner, shall order the ejectment of the former, which order shall be carried out even with the employment of force if necessary, and notwithstanding any appeal from the order, which can be granted in a devolutive effect only.

If there should be improvements, works or plantings on the tenement, which the holder thereof should claim as his own at the time of the ejectment, a memorandum shall be made upon the return, of the class, area, and condition of the things claimed, which shall be appraised by experts appointed by the parties and by the Judge, in a proper case; and upon payment having been made therefor, or bond to the satisfaction of the Judge having been given for their payment, the ejectment shall be proceeded with.

1428.) ART. 281 of Law 105 of 1890. If the delivery of rural property

should be involved, the possessors of the adjoining tenements shall be personally cited to be present thereat.

## CHAPTER VII.

### *Denunciation of a New Work.*

1429). ART. 1337. He who believes himself prejudiced by the work or construction which another is making, may demand the suspension of said work in whole or in part, before the Judge of the place where it is being made.

1430). ART. 1338. The complainant must attach to his petition the proof of the damage which he suffers in his property, and proof that the latter belongs to him.

756 of the Civil Code.

1431). ART. 1339. The complaint having been filed, the Judge shall immediately proceed with his Secretary and two experts, which he shall appoint, to the place where the work is under construction, after citing the complainant and the defendant, and indicating the hour when the inspection is to be made.

1436.

1432). ART. 1340. If the proofs presented and the report of the experts, which must be written immediately, should show the existence of the damages claimed by the complainant, the Judge shall at the same proceeding direct the defendant or the person acting in his place where the work is under construction, or the persons constructing it, to suspend said work, and to demolish at the cost of the defendant what may have been constructed, if such construction could not be preserved without injuring the complainant.

This decision, which is of an interlocutory character, may be appealed from in a devolutive effect only.

Expressly repealed by article 338 of Law 105 of 1890, and subrogated by the following:

1433). ART. 286 of Law 105 of 1890. If by the proofs presented and the report of the experts, which must be written immediately, the damages claimed by the complainant should not be established, the Judge shall deny the petition; but if said damages should be established, the Judge shall at the same proceeding direct the defendant, or the person acting in his place where the work is under construction, or the persons constructing it, to suspend said work, and to demolish at the cost of the defendant what may have been constructed, if such construction could not be preserved without injuring the complainant.

The first decision, which is of an interlocutory character, may be appealed from in both effects by the complainant; and the second, of the same character, may be appealed from by the defendant only, in a devolutive effect.

1437.

1434). ART. 1341. To convince himself, in a necessary case, that the work has not been continued after the prohibition of the Judge, he shall include in the record a precise and exact statement of the condition and extent of the work when its construction was enjoined.

1435.

1435). ART. 1342. If the work should be continued after the judicial prohibition, or what may have been constructed should not be demolished, in a proper case, the complainant shall have the right to recover the damages which he may incur from the person responsible for the continuation or failure to demolish the work; but this right of action can be exercised only in a distinct ordinary action, in the same manner as that which the complainant may have for the damages arising from the construction of the work to the condition it was in when denounced.

1436). ART. 1343. The experts appointed by the Judge, in accordance with the provisions of article 1339, cannot be challenged by the parties.\*

1437). ART. 1344. If the defendant should be of the opinion that he has the right to construct the work which he has been enjoined from constructing, he may seek to enforce his rights in an ordinary action against the complainant, but he can do so only after complying with the orders of the Judge rendered in the proceedings on the denunciation of the new work. In said action the defendant may also claim the damages which the denunciation may have caused him and to which he is entitled if the complaint should be declared groundless; the measure of the damages shall be fixed by the sworn statement of the defendant, regulated by the Judge if objected to, and if the latter should really find them excessive.

1439.

1438). ART. 1345. The suspension of the new work shall continue until the ordinary action referred to in the preceding article shall be concluded, if permission should be granted therein to continue the work, or until the owner of the latter gives bond to secure its demolition and the payment of the resulting damages, in the event of his being cast in the said suit.

1440.

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\* The article cited is ordinal 1431.

1439). ART. 1346. The action granted the defendant by article 1344 to enforce his right in an ordinary suit to continue the work denounced, shall last one year only, counted from the date of the notice of the order directing the suspension of the work.

Upon the expiration of this term, there shall be no remedy whatsoever against the suspension; nor shall there be in the event of the defendant being cast in the ordinary action which he may institute against the complainant.

1440). ART. 1347. The bond referred to in article 1345 must be to the satisfaction of the complainant, unless the latter should be cast in the first instance of the action which the defendant may have brought against him, and unless the bond be offered in the second instance; as in such case it shall be to the satisfaction of the Justice hearing the cause in the second instance.

## CHAPTER VIII.

### *Denunciation of new works.*

1441). ART. 1348. Any person believing that his building or tenement is threatened with damage from another building or any other work whatsoever which is liable to collapse, may demand the demolition thereof, or its repair if possible.

The Judge of competent jurisdiction to hear complaints of this character, is the Judge of the Circuit, Territory or Province in which the building or work threatening to collapse may be situated.

1451.

1442). ART. 1349. The complaint, which must be directed against the owner or usufructuary of the building or work threatening to collapse, having been made, the Judge shall immediately proceed to inspect the said building or work, with two experts whom he shall appoint forthwith, and who cannot be challenged.

1443). ART. 1350. Without further delay than that necessary for the appearance and taking possession of the experts, and for the citation of the complainant and defendant, the Judge shall proceed together with them, his secretary and the parties, if they should be desirous of being present, to the place where the building in question is situated; he shall there make a careful examination and shall hear the opinion of the experts which shall immediately be put in writing; and if the conclusion should be reached that said building or work really threatens to collapse and damage the property of the complainant, the Judge, *eo instanti*, shall issue an order directing that the defendant proceed with the demolition of the building or work, or to repair it, if such repair should be sufficient to prevent the damage.

1444). ART. 1351. If the defendant should not comply with the orders of the Judge within the term which the latter may have allowed him for the purpose, nor should furnish bond, to the satisfaction of the complainant, to repair the damage feared, the Judge, on the petition of the person interested shall place the latter in possession of the building about to collapse, ejecting therefrom those occupying it, in order that he may demolish or repair it, within a term similar to that mentioned.

1448, 1450.

1445). ART. 1352. The complainant cannot expend in the demolition or repair a greater sum than that which the Judge, in accordance with the report of the experts, may have fixed for such purposes; and until the complainant shall be reimbursed for said expenses, he shall have the right to remain in possession of the old work or the material thereof; but if it should be of a fructiferous character, when he returns it he shall be obliged to return the fruits thereof, if he be paid the interest on the money advanced, at the rate of six per cent per annum.

1446). ART. 1353. If the old work should not be of a fructiferous character and if it should not be possible to cover with the proceeds from the sale thereof the expenditures incurred in its demolition or repair, the Judge shall issue an order for the amount thereof against the owner of said work in favor of the complainant who defrayed the expense, which order shall carry execution.

But if the owner should be unable to pay the sum fixed, the old work or its materials shall be adjudicated to the plaintiff in payment, if he should so request.

1447). ART. 1354. If the old work denounced should belong to several and one of the co-owners should demolish or repair it, the latter shall have the same rights of action against the other co-owners as are granted the complainant under similar circumstances in the preceding articles.

1448). ART. 1355. If the old work should not be demolished, repaired or rebuilt by the complainant within the term which the Judge may allow him, according to the circumstances, the matter shall be considered as closed, with the costs taxed against the complainant; but without prejudice to the institution of new proceedings.

1444, 1450.

1449). ART. 1356. The decisions rendered in these actions are interlocutory and subject to appeal, but only in a devolutive effect.

1450). ART. 1357. In the event of the complainant repairing or rebuilding the edifice, the form and dimensions of the old edifice, shall be retained in all its parts, unless it should be necessary to alter them to avoid the danger, in which case they shall be altered with the authority of the Judge.

1451). ART. 1358. When the old work threatens to injure a public place by its collapse, any person may appear before the agent of the department of public prosecution and denounce the existing danger, in order that said Agent may take steps for the demolition or repair thereof, in accordance with the provisions of this chapter.

## CHAPTER IX.

### *Expropriation proceedings.*

This chapter was expressly repealed by article 33 of Law 56 of 1890.

## CHAPTER X.

### *Suits for Accounting.*

1460). ART. 1367. He who believes that he has the right to demand an accounting from another in accordance with the civil substantive laws, shall present his petition to the Judge of competent jurisdiction, according to the general rules, accompanying the proof of the said right.

1461). ART. 1368. If such proof should consist of a judgment or document which, in accordance with article 1010, carry execution, the Judge shall, within twenty-four hours, order the defendant to present the accounts demanded of him, within such term as may be allowed him, in view of their nature and extent; such period shall begin to run from the time of service of the order, which must be done personally, and it may be extended on the petition of the person responsible, if he should plead a just cause in the opinion of the Judge for such extension.\*

1471, 1474, 1475.

1462). ART. 1369. The order directing an accounting may be appealed from in a devolutive effect only, and the appeal shall be heard and decided as an appeal from an interlocutory judgment.

784, 785.

1463). ART. 1370. If the defendant should not produce the accounts within the term which the Judge may have allowed him, the complainant may, with a copy of the document which he attached to his complaint, of the decision ordering the accounting and the judicial attest of such accounting not having been made, institute executory proceedings against the defendant, for the amount at which, under oath, he may estimate the damage arising from the failure to render an accounting.

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\* Article 1010 cited, was repealed by article 338 of Law 105 of 1890, and subrogated by ordinal No. 960.

Said amount may be regulated by the Judge, after hearing the opinion of experts, if the person responsible should so request.

1464). ART. 1371. The accounts having been presented, the Judge shall order that they be referred to the complainant, in order that he may make such statements with regard thereto as he may see fit, within a term of five days.

1476.

1465). ART. 1372. If the complainant should have no objection to make, the Judge shall approve them within forty-eight hours after the said complainant shall have made answer to the reference; no appeal shall lie from the decision he may render for this purpose.

773.

1466). ART. 1373. If the complainant should object to the accounts, which he may do in whole or in part, the objections shall be referred to the person responsible, for a period of five days, and if the latter should agree to all or some of them, the Judge shall immediately set a term, which cannot exceed six days, for him to present amended accounts.

1467). ART. 1374. The orders contained in the last part of the preceding article having been carried out by the person responsible, if the amendments should conform to the objections, the Judge shall approve the accounts, and an appeal shall be granted from the decision he may render to this purpose, in a devolutive effect only, the appeal being heard and decided as an appeal from an interlocutory judgment.

784, 785.

1468. ART. 1375. If the person responsible should fail to return the amended accounts within the term which the Judge may have allowed him for this purpose, the latter, on the petition of the complainant, shall appoint an accountant to make the change within the terms which the Judge may allow him, at the cost of the defendant.

Upon the amendment and presentation of the accounts by the accountant, the proceedings shall be had as in the case of article 1372.

1466.

1469). ART. 1376. If the person responsible should not agree to the objections to the accounts made by the complainant, the Judge shall receive evidence for the term of thirty days, and thereafter an ordinary action shall be prosecuted for the purpose of proving the accounts.

1466.

1470). ART. 1377. If the dissent of the person responsible should be partial, the ordinary action instituted in accordance with the preceding

article, shall not be an obstacle to the accounts being approved in so far as not questioned, if the complainant should so request.

1466.

1471). ART. 1378. If the person claiming to be entitled to an accounting from another should not have the proof of such right, his petition shall be heard in an ordinary action without any special proceedings.

1461.

1472). ART. 1379. If two or more persons are to render accounts arising from one and the same administration, a single action shall be prosecuted; but if the accounts should be of various administrations, even though arising from one contract or one affair, different actions shall be prosecuted.

639 subdivision 4.

1473). ART. 1380. The provisions of this chapter do not affect the special administrative provisions governing the formation and presentation of accounts to be rendered by persons responsible to the treasury.

1474). ART. 1381. The orders directing the accountings having become final, after the special proceedings established in this chapter, they shall have the value and the force of definitive judgment partaking of the nature of *res judicata*.

1461.

1475). ART. 1382. Notice of the judicial order to render an accounting shall be served personally, as is the first notification in proceedings of this character.

1461.

1476). ART. 1383. Every account must be presented with its vouchers and must be drafted clearly with the items duly separated.

## CHAPTER XI.

### *Denunciation of Mines.*

The Mining Code now in force, has subrogated this Chapter.

## CHAPTER XII.

### *Vacant and unclaimed property.*

1483). ART. 1390. Property having no known owner, called by the laws unclaimed property (*mostrencos*) shall belong to the locality or localities within which they may be found or be situated.

1495. 712 of the Civil Code.



1484). ART. 1391. The Municipal "Personero" of the respective locality is under the obligation of suing on behalf of the latter for the unclaimed or vacant property which may be discovered within the confines of such locality.

Any individual has the right to denounce, as unclaimed, the property which appears to have no owner, and he shall be heard as an intervenor with the respective Municipal "Personero."

1486, 1494, 1496.

1485). ART. 1392. In the complaint or denunciation made for the purpose of having certain property declared to be unclaimed, must be very clearly stated the character of the property, its whereabouts or location, its boundaries, if it should be real property, the possessors or holders thereof, if there should be any, and the reasons there may be to believe them unclaimed. Without this requisite the complaint or denunciation shall not be heard. The "Personero" appearing as complainant, must present, if he should have them, the documents upon which he bases his action.

1489.

1486). ART. 1393. If a denunciation should be presented to the Judge without a petition on the part of the Department of Public Prosecution, such denunciation shall be referred to the latter for a period of three days in order that he may state whether he desires to institute proceedings or not. If the official whose duty it is to institute proceedings should state that he will not institute them, the denunciation shall be considered as the complaint, if the person making it should bind himself under oath to prove his statements.

1484.

1487). ART. 1394. The Judge competent to take cognizance of these proceedings, whatever be the value of the property involved, shall be the one of first instance within whose jurisdiction the property may be situated or within which it may have been discovered.

1488). ART. 1395. The public shall be informed of the denunciation or complaint by means of edicts, in which persons believing themselves to have an interest in the property in question shall be summoned, and, furthermore, the possessor or holder thereof, if there should be any, shall receive a copy thereof. The edicts shall be posted for six consecutive months in the most public places of the locality where the property may be found or situated, as well as in the place where the proceedings are being had. They shall, furthermore, be published at the cost of the complainant or party making the denunciation, or of both,

in an official or private newspaper printed in the place where the proceedings are being had, the publication being repeated in each of the six months the edicts are to remain posted.

1484, 1490, 1491.

1489). ART. 1396. If evidence should have been transmitted with the denunciation or complaint fully establishing that the property is abandoned or without a legitimate possessor, the deposit thereof shall be ordered with a person of responsibility appointed by the Judge, and this fact and the name of the depositary shall be made known by means of edicts.

The holder shall in such case have the right to have the deposit made with him, upon giving bond for the care and preservation of the property, and to return it with its products, if he should be cast in the proceedings.

1485.

1490). ART. 1397. If the "*personero*" making the complaint or the person making the denunciation, should state that the property in question is not in the possession of any one, and that for this reason they do not indicate him, and furthermore that for this reason the reference prescribed by article 1395 is not made to the said possessor or tenant, if later there should appear to be one, the latter shall not be prejudiced by whatsoever may be done or decided against his rights, unless, notwithstanding such omission, he shall have opposed it and entered an appearance in the proceedings, which he may do by summarily proving that he was the legal possessor at the time the complaint or denunciation was made.

710.

1491). ART. 1398. If during the term of the edicts any person should appear and claim to have a right to the property the subject of the complaint, upon the expiration of such term evidence shall be taken in the proceedings and an ordinary civil suit shall be prosecuted in accordance with the procedure established for suits of greater import. But if no one should appear within the term indicated, a defender (*defensor*) shall be appointed to such property and the proceedings shall be continued with him as a party.

1488, 1492, 1493, 1497.

1492). ART. 1399. If there should be a possessor or detainer of the property, it shall not be necessary to appoint to such property a defender in the case referred to in the last part of the preceding article.

1493). ART. 1400. If there should be a possessor or detainer, and an opposer who shall have entered an appearance within the term of the edicts, the proceedings shall be continued with all these persons considered as defendants.

1496, 1497.

1494). ART. 1401. When a defender to the property is appointed, the expenditures necessary to enable him to perform his duties, shall be defrayed by the person making the denunciation.

1495). ART. 1402. If the property should be declared to be vacant in the decision, after such decision shall become final, a copy shall be transmitted to the municipal corporation of the locality in the favor of which such property may have been declared to belong.

1483.

1496). ART. 1403. If the person making the denunciation should be cast in the suit, he shall be adjudged to pay the costs, and he shall be declared to be liable for the loss and damage which the possessor of the property may have been caused by the denunciation, unless said denouncer should have based his denunciation upon sufficient proofs which, however were dissipated in the suit, for causes other than falsification, subornation or bribery.

1497). ART. 1404. If the person who claimed the property as his own should be cast in the suit, he shall be adjudged to pay the costs, and for this purpose the products of said property shall be applied in accordance with the substantive laws.

1498). ART. 1405. The private denouncer acquires the following rights:

1. If the property were real, the preference in the purchase, if the bids are equal, and one-half of the products of the estates which the possessor cast must satisfy in accordance with the preceding article; and
2. If the property should be movable, the enjoyment of one quarter of the value thereof.

## CHAPTER XIII.

### *Divorce and Annulment of Marriage.*

1499). ART. 1406. Proceedings for divorce and annulment of marriage shall be prosecuted in accordance with the ordinary procedure in suit of greater import, without any other special features but those indicated in this Chapter.

1504.

1500). ART. 1407. The Judge of First Instance within whose territory the spouses reside, is competent to take cognizance of these proceedings.

1504.

1501). ART. 1408. Cases of divorce and annulment of marriage shall be qualified and considered in accordance with the substantive national laws.

However, every case of separation of the spouses by divorce or nullity, shall be decided in the territories ceded or which may be ceded to the Nation, in accordance with the laws of the State to which the respective territory formerly belonged, if the marriage in question should have been celebrated in accordance with the said laws.

Marriages celebrated in any State not that to which a territory formerly belonged, may be annulled in the latter, and the spouses may be separated by divorce, for causes which authorize dissolution and divorce, according to the laws of the State where the marriage was contracted.

The provision of the preceding paragraph is applicable to marriages contracted in a foreign country, and with regard to which annulment and divorce is requested in any of the national territories.

The existence of the laws to be applied, in the cases of the three preceding paragraphs, must be proved in the proceedings by means of an authentic copy of the provisions pleaded, issued by the Executive Power or by the Superior Tribunal of the respective Nation or State, and a certificate of the same regarding their force at the time of the celebration of the marriage.

1502). ART. 1409. As soon as proceedings for annulment or divorce are instituted, the wife has the right to demand that she be placed in the custody of an honorable family in whom the Judge has confidence, that of the parents of the wife being always given the preference. The custody shall continue while the suit is pending.

1503). ART. 1410. The spouses only may sue for divorce and the annulment of their marriage, and there shall be no other parties to the suit but the spouse bringing it and the spouse against whom it is brought.

1504). ART. 51 of Law 153 of 1890. The ecclesiastic tribunals shall take exclusive cognizance of suits for annulment and divorce of catholic marriages celebrated at any time, in accordance with the canonical laws, and the final judgment rendered shall produce all civil effects in accordance with the provisions of Law 57, articles 17 and 18.

## CHAPTER XIV.

*Emancipation of children.*

1505). ART. 1411. A father who, in accordance with the substantive laws, should be desirous of voluntarily emancipating a son of his, must request judicial authority therefor of the Judge of first instance of the territory in which his domicile may be situated.

1506). ART. 1412. The petition shall be made in writing, with a statement of the reasons for the emancipation, and must be accompanied by the certificate of birth of the son, or in the absence of the latter, by any other proof establishing his age.

1507). ART. 1413. The Judge to whom the petition may be addressed shall appoint to the son a curator *ad hoc* to whom after he shall have been sworn into office, shall be referred the petition of the father. The reference shall also be made to the son, and both shall make answer in the same document, within the term which the Judge may allow them, and which cannot exceed five days.

1508). ART. 1414. If the son, together with his curator, should agree to his emancipation, the Judge, without further proceedings, shall make an order authorizing it, in which order he shall direct that the proceedings had be transmitted to the Notary who is to authenticate the proper public instrument.

If the son should not agree to the emancipation, the Judge shall order that the proceedings be filed, without this being an obstacle to the renewal of the petition of emancipation.

1509). ART. 1415. The Judges shall not authorize any conditional emancipation, nor that of a child who shall not have attained the age of puberty, nor that of one with regard to whom there does not exist full proof that he is under the paternal power of the person emancipating him.

1510). ART. 1416. Compulsory emancipation, which is that which may be demanded by the son in the cases provided for in the substantive laws, shall be heard and decided in accordance with the procedure laid down for ordinary actions of greater import, and the Judge of first instance in whose territory the father and the son reside, shall take cognizance thereof.

In these proceedings a curator *ad litem* shall be appointed to the son, and, if he should so request, he shall be removed from the power of the father, and placed under the custody of another during the pendency of the proceedings.

## CHAPTER XV.

*Qualification as to Age.**(Habilitación de edad.)*

1511). ART. 1417. Any minor who is desirous, in accordance with the substantive laws, of obtaining qualifications as to age, must request it in writing and in person, or without the necessity of a curator, of the Judge of first instance of the territory in which he resides.

1512). ART. 1418. The minor must attach to his petition:

1. The certificate of his birth, or sufficient proof of his age.
2. Proof that the minor is qualified to manage his property (*interests*) profitably by himself, and of the necessity or convenience of the qualifications; and
3. A report upon the matters mentioned in the preceding article, made by the Municipal Corporation of the place of the domicile of the minor.

1513). ART. 1419. The proofs referred to in the preceding article may consist of declarations of witnesses, provided that the latter assert positive acts by which the capacity of the minor may be deduced and the necessity and convenience of the qualification.

467, 469, 470, 471.

1514). ART. 1420. The Judge shall refer the petition to the two nearest relatives of the minor who are able to appear in court; to his curator, if the minor should have relatives and a curator, and to the Agent of the Department of Public Prosecution; to each for a term of forty-eight hours.

342 of the Civil Code.

1515). ART. 1421. Answer having been made to the references, or a petition for judgment in default having been made the Judge shall, within three days, decide whether he does or does not grant the qualification.

1516). ART. 1422. If it should be granted, a copy of the resolution shall be issued in favor of the minor, which shall be signed by the Judge and his Secretary, and its publication shall be ordered for three consecutive times in the official newspaper of the place. If it should be denied, the proceedings shall be filed, unless the minor should offer new proof, when the denial shall have been due to the insufficiency of that presented. The new petition shall be passed on within the terms prescribed.

## CHAPTER XVI.

*Maintenance.*

1517). ART. 1423. Summary proceedings for maintenance shall lie when the petitioner shall demand it with any of the documents that, in accordance with article 1010, carry execution, and which state the obligation to furnish it; or when there shall accompany the complaint evidence that the maintenance sued for is called under the law legal, or necessary, or that it can be ordered furnished by the Judge, and not by the right of a real action.\*

1526, 1527. 411 *et seq.*, of the Civil Code.

1518). ART. 1424. If the document which carries execution, which forms the basis of these proceedings, should be conditional, summary proceedings shall also lie, provided that the document state the net amount due by reason of maintenance, and that the sufficient proof be attached to the complaint that the condition contained in the document has been performed.

1521, 1526.

1519). ART. 1425. If the maintenance demanded should be of the character mentioned in the second part of article 1423, the petitioner must attach to his petition proof, even though it be summary, of the origin of his right.

1520). ART. 1426. When one of the facts referred to in the preceding article, should be relationship between the petitioner and the respondent, in the absence of direct proof, it shall be sufficient in the proceedings in question, that witnesses testify to the fact of said petitioner being known in the place of his domicile and that his relationship is generally admitted and considered certain in the public opinion.

1521). ART. 1427. In order to establish the performance of the condition, in the case of article 1424, in the absence of direct proof it shall be sufficient that the depositions of competent witnesses be attached affirming that the acts of which the condition consisted, have been performed.

1522). ART. 1428. The depositions referred to may be taken without the citation of the parties; but the Judge receiving them must certify immediately thereafter that he is acquainted with the witnesses, and

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\* Article 1010 cited herein, has been repealed by article 338 of Law 105 of 1890, and subrogated by ordinal article 960.

that in his opinion they suffer from no legal impediment preventing them from testifying.

467, 469, 470, 471.

1523). ART. 1429. If maintenance should be demanded in the cases and with the proofs mentioned in the preceding articles of this chapter, the Judge within twenty-four hours, and without citing or hearing the defendant, shall order the payment thereof. The periodical sum and the terms of payment shall be fixed by the Judge in his discretion, when the document shall not express these circumstances.

1524). ART. 1430. The judgment containing the said order to furnish support, must be executed, notwithstanding an appeal, which may be granted in a devolutive effect only, and it is not an obstacle to either of the two parties instituting and prosecuting an ordinary action involving the same maintenance.

1527.

1525). ART. 1431. The judgment denying the order to furnish maintenance, shall likewise not prevent the petitioner from seeking to enforce his right again in an ordinary action, provided that he furnish new proofs.

1526). ART. 1432. When the document which forms the basis of the proceedings brought by the petitioner, should have the requisites mentioned in article 1423, and should state the net amount and the term for which maintenance is due, an executory action shall be prosecuted, without any special features.

1527). ART. 1433. An ordinary action shall also be prosecuted, without any special features, when maintenance shall be demanded without the proofs mentioned in the preceding articles of this chapter, or when the maintenance is of a voluntary character or due under the right of a real action, arising under a contract or a last will.

1519.

## CHAPTER XVII.

### *Appointment and removal of guardians.*

1528). ART. 1434. A testamentary tutor or curator must appear before the Corregidor of the domicile of the ward in order that his appointment may be confirmed, and must produce the testament and the proof of the death of the testator.

1529). ART. 1435. The Corregidor, after the furnishing of bond, when such bond may be necessary in accordance with the substantive laws, shall issue a decree of confirmation, in which he shall fix the term



within which the guardian is to prepare the inventory in due form of the property of the ward, in accordance with the provisions on the subject contained in the substantive laws.

464 of the Civil Code.

1530). ART. 1436. When a ward or minor shall not have a testamentary tutor or curator, the persons called by law to the legal tutorship or curatorship, must appear before the Corregidor of the domicile of the ward or minor, and demand the confirmation and must produce the evidence showing that they are the legal tutors or curators.

1533. 457, 463 of the Civil Code.

1531). ART. 1437. In the case of the preceding article, the Corregidor shall also confirm the appointment, and fix the time for the formation of the inventory.

468 *et seq.*, of the Civil Code.

1532). ART. 1438. If several persons should appear and claim to be entitled to the tutorship or curatorship, to the exclusion of the others, the Corregidor, after having heard the Municipal "*Personero*," shall summarily decide who is to exercise the tutorship or curatorship. An appeal from this decision in a devolutive effect only shall lie; but this shall not be an obstacle to the right to the tutorship or curatorship being made the subject of an ordinary action.

1533). ART. 1439. Any person knowing that in the place of his residence there is any person who should be under the protection of a tutor or curator and is not, may verbally or in writing denounce the fact to the respective Municipal *Personero* or Corregidor, in order that the appointment of a tutor or curator may be made.

To make the denunciation referred to is a duty incumbent upon the relatives of the ward or minor by consanguinity within the fourth degree and of affinity within the second degree, even though they should not be included among those called to the tutorship or curatorship; and should they fail to make it, they shall incur a fine of ten to one hundred pesos, which shall be imposed by the respective Corregidor.

1530. 431, 432 of the Civil Code.

1534). ART. 1440. The Corregidor to whom the denunciation is made shall direct, after hearing the Municipal "*Personero*," that as soon as possible measures be taken to establish the truth of the fact denounced, and after such measures shall have been taken, he shall appoint a provisional tutor or curator, and shall order that edicts be posted summoning those who believe themselves to be entitled to the guardianship to

appear and enforce their rights within a term which shall be fixed by the Corregidor in his discretion, which term cannot be under thirty days nor exceed ninety.

1535). ART. 1441. Upon the expiration of the term referred to in the preceding article, without any person having appeared claiming the right to the tutorship or curatorship, with the necessary evidence, the Corregidor shall make the final appointment of the tutor or curator, taking into consideration the recommendations which may have been made in favor of the ward or minor by his relatives.

1536). ART. 1442. If any of those who, in accordance with the substantive laws, may petition for the removal of a tutor or curator, should do so, he must present his petition in writing to the Judge of First Instance of the territory in which the domicile of the guardian is situated, and in such proceedings the ordinary procedure in an action of greater import shall be pursued.

Subrogated by the following:

1537). ART. 287 of Law 105 of 1890. When any of those who, in accordance with the substantive laws, may petition for the removal of a tutor or curator, should do so, he must present his petition to the respective Judge of the territory in which the domicile of the guardian is situated, and in such proceedings, the ordinary procedure in an action of greater or lesser import shall be pursued, according to the amount of the tutorship or curatorship.

1541, 1542.

1538). ART. 1443. Answer having been made to a petition for removal, the Judge shall appoint a provisional tutor or curator during the pendency of the proceedings for removal, and shall confirm the appointee in his office, notwithstanding any appeal which may be taken from the decree of appointment, which can be granted in a devolutive effect only.

1539). ART. 1444. If the defendant tutor or curator should without opposing dilatory exceptions, fail to make answer to the complaint within the legal term, upon its expiration the appointment prescribed in the preceding article shall also be made.

1540). ART. 1445. On the petition of the defendant, and when the Judge shall deem it necessary, the private plaintiff may be required to furnish bond to indemnify the ward for the loss and damage which he may incur by virtue of the proceedings for removal brought against his guardian, if a decision should be rendered in favor of the latter. If the bond should be required the appointment of the provisional guardian shall not be confirmed, until such bond shall have been furnished.

1541). ART. 1446. In these proceedings, the Department of Public Prosecution shall always be heard, even though they are prosecuted at the instance of a private complainant.

1542). ART. 1447. It is the obligation of the respective Agent of the Department of Public Prosecution to request the removal of the guardians in the cases in which, in accordance with the law, they are removable, under the same liability which they would incur for a failure to prosecute criminal offenses.

1543). ART. 1448. The official whose duty it is to confirm a tutorship or guardianship, is of competent jurisdiction to resolve all questions relating thereto, and in the absence of any other procedure specially established, that prescribed in articles 742 and 743, for incidental issues in ordinary actions shall be had before a decision is rendered.

## CHAPTER XVIII.

### *Judicial Interdiction.*

1544). ART. 1449. He who, in accordance with the substantive laws, shall have the right to institute proceedings for interdiction, must file a petition in writing before the Judge of first instance of the territory in which the spendthrift, the insane person or the deaf-mute whose interdiction is in question, resides.

1545). ART. 1450. The proceedings for the interdiction of a spendthrift shall be heard with the latter in accordance with the procedure established for ordinary suits of greater import.

1552, 1556.

1546). ART. 1451. Until a decision shall be rendered in the proceedings for interdiction, the Judge may, on the petition of the plaintiff giving consideration to the statements of the relatives or other persons, and after hearing the alleged spendthrift, decree the provisional interdiction, which decree shall be rendered after proceedings similar to an ordinary incidental issue (articles 742 and 743), and may be appealed from in a devolutive effect only.

1547). ART. 1452. In the petition which may be interposed for the interdiction of an insane person or a deaf-mute, the person making it shall designate an expert to conduct the examination which will be treated of below.

1548, 1551.

1548). ART. 1453. If the complainant should not be an Agent of the Department of Public Prosecution, after the complaint mentioned in the preceding article shall have been made, the Judge shall direct said

Agent to designate another expert for the same purpose; but if the plaintiff should be the Department of Public Prosecution, the appointment of the second expert shall be made by the Judge, without prejudice to the appointment in a necessary case of a third person to decide any disagreement, in accordance with the provisions of Chapter 6, Title II of this Book.

1549). ART. 1454. After the experts shall have been appointed, and the proper oaths administered to them, the Judge shall decree the examination of the insane persons or deaf-mutes, which examination said Judge shall make, together with the experts, three times on three consecutive days.

1550). ART. 1455. The examination having been made, the Judge, within forty-eight hours, shall decide whether the interdiction is or is not to be decreed. If he should decree it, an appeal from his decision shall lie in a devolutive effect only.

1551.

1551). ART. 323 of Law 105 of 1890. The provisions of articles 1452 to 1455 of the Judicial Code do not exclude the taking and consideration of such other evidence as may conduce to establishing the state of insanity of the person whose interdiction is in question.

Decisions rendered in proceedings of this character shall be submitted for consultation to the respective Superior Tribunal, if there be no appeal. The tribunal may, *ex proprio motu*, order such corroboration which it may consider necessary.

1552). ART. 1456. Immediately after the institution of proceedings for the interdiction of an insane person or deaf-mute, the Judge shall direct the posting of an edict summoning those who believe that they have a right to intervene in the proceedings.

1553). ART. 1457. If any person should oppose the interdiction, without prejudice to the execution of the decree declaring it, an ordinary suit shall be prosecuted with the opposer as a party.

1554). ART. 1458. Opposition to the interdiction may be made by the same persons who under the substantive laws, have the right to petition therefor.

1544.

1555). ART. 1459. For the rehabilitation of a spendthrift, insane person or deaf-mute, proceedings shall be had as prescribed for the purpose of decreeing the interdiction.

Such proceedings may be instituted by the spendthrift, insane person or deaf-mute.

1545.

1556). ART. 1660. The representative of the Department of Public Prosecution shall always be heard in these proceedings for interdiction and rehabilitation, even though private parties should have been the petitioners.

## CHAPTER XIX.

### *Judicial intervention in the administration of Guardians.*

1557). ART. 1461. When a guardian shall be desirous of alienating or encumbering with a mortgage or servitude the real property of the person who may be under his charge, or to alienate or pledge the valuable movables or such as have a special value outside of their intrinsic value, he shall apply in writing to the Judge of first instance of the territory where the property may be situated, requesting the authority necessary in accordance with the substantive laws.

1566, 1567.

1558). ART. 1462. To this petition the guardian shall attach his title as such, or the copy of the confirmation of his appointment, and the titles of ownership of the property which he is desirous of alienating, encumbering or pledging, if they should be in existence; and in the same petition he shall submit evidence of the profit or manifest necessity which may exist for the alienation or encumbrance.

1561.

1559). ART. 1463. The Judge shall immediately order the evidence heard, with the citation of the representative of the Department of Public Prosecution.

1560, 1562.

1560). ART. 1464. The witnesses who are to testify in such case, must, in addition to having the qualifications generally necessary in a competent witness, be landowners and persons of prominence in their locality. The representative of the Department of Public Prosecution may challenge them, and if he should do so, the Judge shall grant a common peremptory period of ten days.

1561). ART. 1465. The witnesses must testify as to precise and determinate matters, from which the utility or manifest necessity which must exist in order that judicial authority may be granted, can be properly deduced.

466, 467, 469, 470, 471.

1562). ART. 1466. The evidence having been taken, it shall be referred to the representative of the Department of Public Prosecution for forty-eight hours, in order that he may render his opinion, after receiving which, the Judge shall decide within the next six days, whether he does or does not grant the authority requested.

This decision may be appealed from in both effects.

1563). ART. 1467. If authority should be granted for the alienation of real property or a valuable movable, or a movable which has a special value, the Judge shall order in the same decision, that the property be appraised by experts appointed in the form established in Chapter VI, Title II of this book.

1607.

1564). ART. 1468. After the property has been appraised the Judge shall order the sale thereof at public auction, which sale shall be held in accordance with the terms prescribed in articles 1060 to 1081 for the sale of property in executory proceedings.

In such case, and in all other cases of voluntary sale of property at public auction, no bid shall be admissible which does not cover the entire amount of the appraisal.

1565). ART. 1469. The vendor shall have the same obligation as if he had made the sale in an executory action, and shall swear that he has made the sale for himself, or his principal exhibiting in the latter case the power of attorney which may have been granted him for the purpose of making the sale.

1566). ART. 1470. If the purpose of the judicial authority should be the celebration of a contract other than a sale, it shall be entered into, and there shall be inserted in the instrument, if granted, the judicial decree containing the said authorization.

1567). ART. 1471. Whenever, under the substantive laws, guardians require a judicial decree for the performance of some act or the celebration of any contract on behalf of the persons under guardianship, the provisions of this Chapter shall be observed in so far as the act or contract the subject matter of the authorization shall permit.

## CHAPTER XX.

### *Religious foundations (Capellanías).*

1568). ART. 1472. This article to and including:

1579). ART. 1483, have been derogated by article 338 of Law 105 of 1890, and subrogated by the following:

1580). ART. 324 of Law 105 of 1890. For civil purposes, religious foundations (*capellanías*) are generally called the foundations made for the purpose of having masses said or other pious works done connected with worship.

When the property or income subject to the foundation is not ceded to a religious corporation or congregation, but to private individuals, with the sole charge of having masses said or the other pious works done which may be designated in the foundation, the foundations are called laical, and also mercenary (*mercenarias*), profane (*profanas*), *patronatos de legos*, pious legacies and memorials of masses (*memorias de misas*).

If the purpose of the foundation should be to provide for one or more persons who pursue an ecclesiastical career, an income by reason of their office, under certain conditions laid down by the founder and with the acceptance or approval of the respective ecclesiastic Prelate, the foundation is called collative (*colativa*).

1581). ART. 325 of Law 105 of 1890. The filling of laical foundations pertains to the civil jurisdiction. That of collative foundations and other ecclesiastic or religious benefices, is of the exclusive jurisdiction of the ecclesiastical authorities.

1582). ART. 326 of Law 105 of 1890. The person claiming to have the right to be declared the patron or chaplain of a *patronato de legos* or laical foundation, must present his petition to the Judge of the Circuit in which all or a greater portion of the property subject to the foundation may be situated, and in the event that this is unknown or doubtful, to the Judge of the Circuit in which the foundation was created.

1583). ART. 327 of Law 105 of 1890. The petitioner must attach to his petition the document containing the foundation of the benefice or patronate, and evidence that by the death of the last holder thereof or for another cause it is vacant.

1584). ART. 328 of Law 105 of 1890. The petition having been made in the manner stated, and the Judge having convinced himself of his competency, he shall direct that the parties be summoned in the manner prescribed by the Judicial Code, for notification and citations.

1585, 212 *et seq.*

1585). ART. 329 of Law 105 of 1890. The edicts must, in addition, be posted in the District in which the property subject to the foundation may be situated.

1586). ART. 330 of Law 105 of 1890. No ordinary action shall be prosecuted in accordance with the procedure established by the Judicial Code for ordinary actions of greater import, with the persons who enter an appearance and the defender, in a proper case as parties.

1587). ART. 331 of Law 105 of 1890. A person interested who should have failed to enter an appearance within the term of the summons, shall be permitted to become a party to the suit at the state it may have reached when he appears.

1588). ART. 332 of Law 105 of 1890. The same procedure which is to be observed in filling laical benefices, is to be pursued when a declaration is requested to the effect that the right to enjoy certain property or rights pertains to a person by virtue of the clause of the testament or contract which calls indeterminate persons, reserving always collative foundations and ecclesiastic benefices, which pertain to the ecclesiastic jurisdiction, in accordance with the preceding provisions.

## TITLE XII.

### FIRST AND LAST CHAPTER.

#### *Summary Proceedings in General.*

1589). ART. 1484. When, according to the law, a matter must be decided in a brief and summary proceeding, without the method of procedure being established, such procedure shall be that established in the following articles of this Title.

1590). ART. 1485. Upon the presentation of the bill of complaint, it shall be referred to the defendant for a period of three days, and upon answer being made, the Judge, after citation of the parties, and consideration only of the evidence which may have been attached to the complaint and the answer, shall render judgment within the three days next after the last citation.

1591). ART. 1486. If the defendant should fail to make answer to the complaint within the legal term, the Judge, after citation of the parties, shall render judgment within three days, upon the merits of the evidence presented by the plaintiff, without prejudice to opposition, which the defendant may make within the eight days next after service of notice of the judgment rendered in default.

1592). ART. 1487. If opposition should be made within the term mentioned in the foregoing article, evidence shall be taken in the proceedings for the common period of eight days which is not subject to extension, upon the expiration of which the Judge, after citation of the parties shall render judgment within the three days following the last citation.

1593). ART. 1488. In any case, if any of the parties should request that the evidence of witnesses be heard in support of his contentions, the proceedings shall be conducted in accordance with the provisions of the preceding article.

1594). ART. 1489. If the plaintiff should defer to the decisory oath of the defendant, and the latter should take it, a decision shall be rendered in accordance with what may result from said oath.

1595). ART. 1490. The judgments rendered in proceedings of this



character may be appealed from, but in a devolutive effect only, and the appeal shall be heard and decided as appeals from interlocutory judgments.

784, 785.

### TITLE XIII.

#### FIRST AND LAST CHAPTER.

##### *Privileges of the Nation in regard to procedure.*

1596). ART. 1491. With relation to procedure in civil matters, the Nation enjoys the following privileges:

1. In no case can execution issue against it. Its obligations which are demandable in an executory manner, according to the general rules, shall be enforced in the manner prescribed in article 884.

2. Costs cannot be adjudged against it. When by permission of law a private individual litigates with the Nation, both forming one party, and such party should be adjudged to pay the costs, one-half the amount of such costs only shall be taxed against the private individual.

1597.

3. The representative of the Nation in the second instance, may plead therein, up to the time for citation for judgment, even though no evidence shall have been taken in the cause, such peremptory exceptions which may not have been pleaded in the first instance.

291.

4. Process must be served on the representatives of the Nation in their offices, at the time they may have fixed for the purpose. Only in the event of their not being found in their offices, or their failure to appear in the respective Tribunal or Court, within two days after the issue of the order or decree which it is desired to serve on them, and at the hour stated, shall a notification made by means of edicts be legal.

5. The plaintiff cannot enforce against the Nation the right of suspension, during the proceedings, of any industrial operation which might prejudice said plaintiff.

183 *et seq.*

6. The Agents of the Department of Public Prosecution are entitled to double the term for reference in judicial proceedings.

And such other privileges as result from the provisions of this Code.

1597). ART. 35 of Law 100 of 1892. The Nation, the Departments and the Municipalities can never be adjudged to pay costs, and judg-

ments rendered against such entities shall be submitted for consultation, if no appeal should be taken by a legitimate party.

291, 305, 334, 351, 352, 408, 676, 765, 886, 1596.

## TITLE XIV.

### FIRST AND LAST CHAPTER.

#### *Miscellaneous provisions.*

1598). ART. 1492. Judges and other officials of the Judiciary who should omit any legal formality in judicial proceedings even though such formality should not be of those the omission of which is a cause of annulment, shall be fined by the respective superior from one to five pesos each time, reserving always the action for loss and damage in favor of the person suffering them.

1599). ART. 1493. Whenever an oath is required by this Code, of the parties, of the witnesses, experts and other persons taking part in judicial proceedings, it shall be understood, even though this be not stated, that each may take it according to the form prescribed by his religious beliefs.

1600). ART. 1494. Periods of time or terms for the purposes of judicial procedure, shall be computed by reckoning the days at twenty-four hours, the months at the time running from the day of the beginning of the term to the same day of the following month, and the years at the rate of three hundred and sixty-five days each. If the term should expire on a day of vacation, the act shall be executed on the next working day.

67, 68, 70.

1601. ART. 1495. The term of distance shall be computed at the rate of one day for each two miriameters.

69 of the Civil Code.

1602). ART. 1496. A litigant who shall be declared a pauper, is not obliged to pay costs.

1603). ART. 1497. For the purposes of the preceding article, a litigant shall be declared a pauper who proves that he does not receive an annual income of one hundred and eighty pesos.

This proof shall be adduced in the same suit in which it is desired to secure the benefit. The declaration of poverty shall be made in the judgment upon the main issue, in the suit and shall not apply in any other suit in which the same litigant may be a party.

1604). ART. 334 of Law 105 of 1890. The Justices of the Supreme Court, those of the District Tribunals and the Judges, may make use of compulsion in the form of arrest not to exceed six days, and successive fines, from five to fifty pesos, to oblige the parties, the experts and witnesses, the officials subordinate to them, or any other persons required to act in the proceedings, or whose service or co-operation may be necessary therein, to comply with the orders or decrees which said authorities may make in the performance of their functions. Any person who is a resident of the place where any of the said officials reside, and who may be legally called upon, must furnish the assistance required of him for the speedy administration of justice, to prevent the perpetration of a crime, or to apprehend delinquents or individuals who are to be detained by virtue of a judicial order.

1605). ART. 337 of Law 105 of 1890. The endorsements or references upon a document shall be drawn immediately after the same, if possible, for which purpose the unwritten portion thereof may be used, even though the paper be not of the proper kind.

1606). ART. 26 of Law 100 of 1892. The notice referred to in article 1960 of the Civil Code, may be served through any of the Judges of the residence of the debtor, the provisions of article 1961 of the said Code being observed.

1607). ART. 47 of Law 100 of 1892. The sale of real property or of property having a special value, belonging to minors under the paternal authority, shall be effected at public sale, the procedure established by articles 1467 *et seq.*, of the Judicial Code, being observed.

1608). ART. 48 of Law 100 of 1892. Petitions for permission to alienate or encumber the property of married women, in the cases of article 1810 of the Civil Code, shall be subjected to the procedure established in article 1461 to 1466, inclusive, of the Judicial Code. The Judge of competent jurisdiction to take cognizance of these petitions and those made by guardians, in accordance with the provisions of said chapter, is that of the domicile of the person or persons whose property it is desired to alienate or encumber.















